Bankruptcy in the Court of Chancery, 1674-1750

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Abstract

This thesis examines cases involving bankruptcy brought before the court of Chancery between 1674-1750. The historiography of pre-modern England has tended to treat bankruptcy and Chancery as two distinct areas of scholarly research, meaning that Chancery has largely been overlooked in the existing historiography of early modern bankruptcy. Similarly, the scholarship on the equitable jurisdiction of Chancery has failed to account for how the bankruptcy process interacted with the court. The thesis is the first substantial work to analyse the manner in which the procedure of bankruptcy was litigated within the court. As such, the work makes an original contribution to our understanding of early modern bankruptcy by demonstrating how an initially autonomous legal procedure came to Chancery to seek the aid or assistance of the court in the wider debt-recovery process.

In order to undertake such a task, it is necessary to pay close attention to the procedures of the court, and especially to the people and processes that went into creating the documents which have survived. The thesis analyses each individual stage of proceeding in isolation — which forms the basis of the chapter structure — by paying close attention to the types of documentation created and presented to the court at these different phases in the legal process. Because each stage of proceeding required a different ordering of language in order to conform to the legal requirements of the court, we can only fully understand how bankruptcy was litigated by pausing and paying detailed attention to the types of documents created at each individual stage. Ultimately, the thesis utilises Chancery sources to reconstruct the processes around bankruptcy, making an important intervention in the use and classification of legal documents by historians, both within and outside Chancery.

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Declaration

I declare that this thesis is a presentation of original work, and that I am the sole author. This work has not previously been presented for an award at this, or any other, University. All sources have been acknowledged as references.

Introduction

This thesis examines cases involving bankruptcy brought before the court of Chancery between 1674-1750. Historians of pre-modern England have tended to treat bankruptcy and Chancery as two distinct areas of scholarly research, meaning that Chancery has largely been overlooked in the existing historiography of early modern bankruptcy. Similarly, the scholarship on the equitable jurisdiction of Chancery has failed to account for the manner in which the procedure of bankruptcy was litigated within the court. This is a strange omission, as under the stewardship of Heneage Finch, the first Earl of Nottingham — who presided as Lord Keeper of the Great Seal and later as Lord Chancellor between 1673-1682 — the court took a more active role in bankruptcy proceedings, being established as the sole appellate jurisdiction.[1] To clarify, this is not a thesis about the history of bankruptcy, as this would require a multi-court analysis, looking at how bankruptcy procedure was conducted outside of courts of law, as well as how it was litigated in both the common-law courts and equitable jurisdictions. Furthermore, this is not a history of the development of the equitable jurisdiction of Chancery. Rather, the thesis is the first substantial work to analyse the way in which the procedure of bankruptcy was litigated within the court of Chancery.

As such, the thesis makes an original contribution to our knowledge of bankruptcy and the court of Chancery in three ways. Firstly, as the first substantial work to analyse how cases involving bankruptcy were litigated within the court, the thesis refocuses our attention on the importance of Chancery records in the history of pre-modern bankruptcy. This will enhance our knowledge of how the formal authority of the court was required in order to maintain and uphold a complex system of debt recovery. This adds a new dimension to the existing

[1] D.E.C Yale, ed., *Lord Chancellor Nottingham's Chancery Cases*, 2 vols. (London: Quaritch, 1957), vol.1, pp.cxiv-cxx.

scholarship, by showing that the level of complexity and the multifaceted nature of bankruptcy procedure — and credit networks more generally — has been overlooked, and misunderstood, in the historiography. Secondly, the thesis adds to our understanding of the social and cultural history of the period by demonstrating the manner in which parties in a suit utilised the court for their own benefit and created the documents which have survived. Particular attention will be paid to the specific and evaluative language utilised in relation to fraud, creditworthiness, honesty, and sincerity, and how these can inform us of wider social perceptions of failure. Finally, by utilising Chancery sources to reconstruct the operation of bankruptcy, the thesis will highlight the necessity of paying close attention to the procedure of the court, and the people and processes that went into creating the written documents which have survived. As the legal requirements of the court altered as the suit progressed, I will argue that scholars can only understand how bankruptcy — or indeed any type of suit — was litigated by providing background and context to the jurisdiction under discussion, the type of document being used, and finally, the stage of proceeding from which these sources have been utilised. Put simply, because every critical stage of a proceeding was recorded in written form, an abundance of archival material survives. However, the records of a suit heard in Chancery were not filed together, but were instead filed according to the stage of the proceeding.[2] The thesis analyses each individual stage of proceeding in isolation — which forms the basis of the chapter structure — by paying close attention to the types of documentation created and presented to the court at these different phases in the legal process. Ultimately, the thesis makes an important intervention in the use and classification of legal documents by historians, both within and outside Chancery.

[2] See Mary Clayton, 'The Wealth of Riches to be Found in the Court of Chancery: The Equity Pleadings Database', *Archives: The Journal of the British Records Association*, vol.28, no.108 (2003), pp.25-31.

The remainder of the introduction sets out to clarify the parameters and aims of the thesis. A lengthy introduction is necessary in order to explain a number of technical aspects in detail, which will be referred to throughout. The first section provides an overview of official bankruptcy procedure before briefly outlining the alternative avenues available to creditors. The second section focuses on the court of Chancery, detailing the development of the equitable jurisdiction of the court, its procedure, and its decision-making process. Throughout the thesis, close attention is paid to the people involved in the legal process: litigants, defendants, witnesses, debtors, creditors, bankruptcy officials, court officials, and legal experts. As such, these first two sections outline how such individuals interacted with both the bankruptcy process, and subsequent litigation in Chancery. In the third and fourth sections, the attention turns to the existing scholarship. Section three provides a review of the historiography of bankruptcy and the court of Chancery, demonstrating how the two have rarely been analysed together. The fourth section outlines the development of the way social historians of the law have approached legal sources, and in particular, how they have analysed the construction of the plot, story, or script in these documents, and the way in which this was utilised as legal evidence in the form of a compelling narrative. Throughout these two sections, certain methodological issues are highlighted in order to foreground my own approach to legal documents, and to demonstrate the manner in which the narrative in these documents altered according to the stage of proceeding in which it was utilised. The final section provides a chapter summary, bringing together the key themes of the thesis. While certain issues surrounding the cataloguing and filing of Chancery records are highlighted here, these are explained in greater detail at the beginning of each chapter.

Bankruptcy as a Legal Status

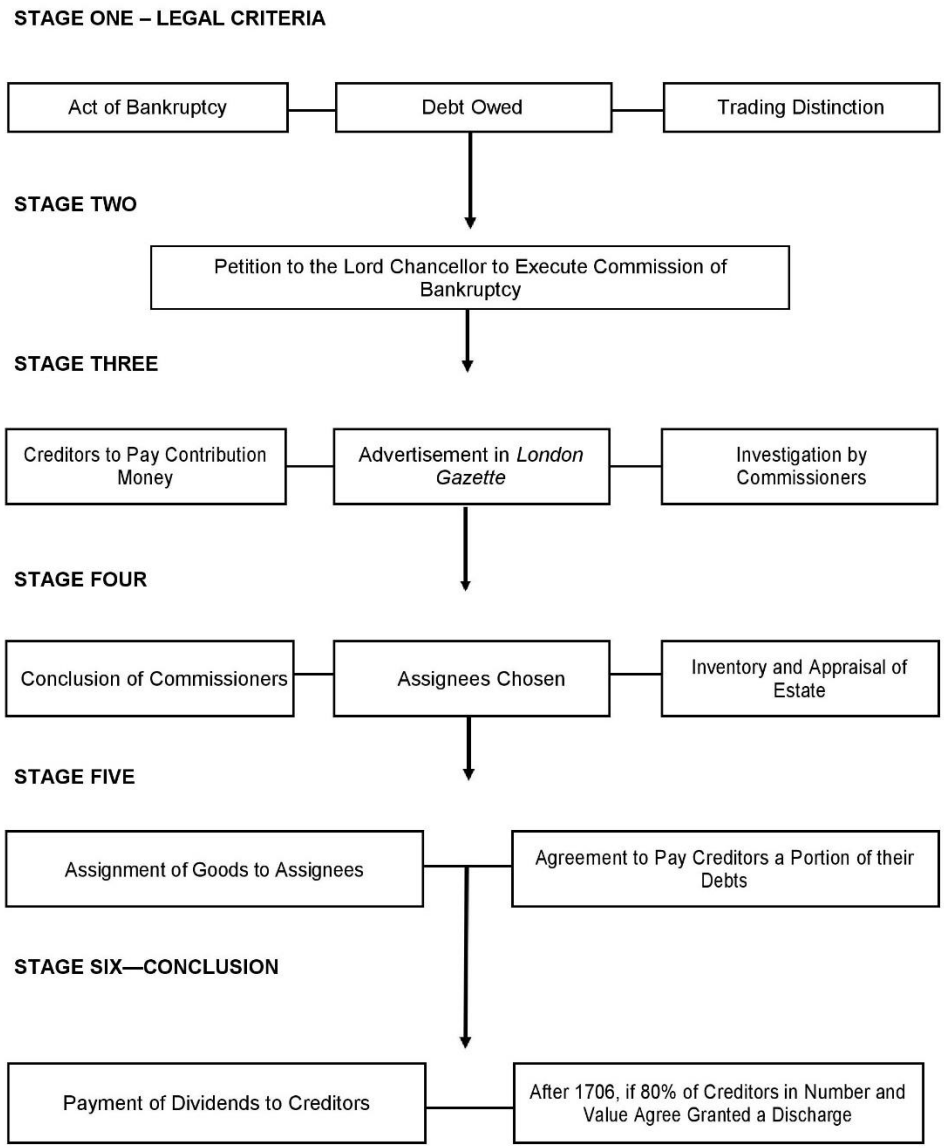
This section provides a detailed overview of bankruptcy procedure. While any individual could become insolvent, bankruptcy was a legal category which was assigned to a debtor through a procedure established in early modern statutes.[3] In the vast majority of instances, this procedure would have taken place, and been completed, outside of the jurisdiction of the court of Chancery. This means that all sources utilised in the thesis were where the bankruptcy process had somehow gone wrong, and certain individuals required the overarching authority of the court in order to repair, or complete, the procedure. Furthermore, this process was just one of several ways in which creditors could pursue their debts, so it is important to have a firm understanding of the advantages and disadvantages of this form of debt recovery.

Bankruptcy Procedure

Figure 1 shows a basic overview of bankruptcy procedure, which will now be explained in detail and referred back to throughout the thesis.

[3] For the law of insolvency, see Ian F. Fletcher, *The Law of Insolvency*, fifth edition (London: Sweet & Maxwell 2017).

Figure 1: Bankruptcy Procedure



As a legal status, bankruptcy was a creation of parliament, having first entered the statute books in 1543 as, 'An Act Against Such Persons as do Make Bankrupt'.[4] However, the specific wording of the act was so vague as to make its practical application unworkable, and between 1571-1624 further legislation was enacted which established the fundamental early

[4] 34 & 35 Henry VIII c.4 (1543).

modern principles of bankruptcy law.[5] Within these acts, certain stipulations applied restricting who could become a bankrupt. Firstly, certain trades and professions were excluded, as only those 'seeking his or her Trade of Living by Buying and Selling' could become a bankrupt.[6] Julian Hoppit has claimed that the intention of this 'trading' distinction was 'to keep the jurisdiction of bankruptcy away from the landowning and farming community'. As such, the law was meant to be limited to the business community, and its introduction during the sixteenth century demonstrates the assumption that 'only overseas traders were liable to the sorts of losses and used the sorts of credit which the law sought to deal with'.[7] However, this theoretical stance was difficult to implement practically. As the economy expanded throughout the seventeenth century, the earlier notion that bankruptcy should be limited to overseas traders broadened to include all those who were engaged in the widespread use of credit. Indeed, by the nineteenth century it was proposed that bankruptcy should apply to all those who used bills of exchange, as this was the most common paper instrument used in trade.[8]

Secondly, an individual must have committed an 'act of bankruptcy' which sought to deny a creditor the satisfaction of their claim; being defined as 'any such Person … which shall keep his or their Houses, or flee to Parts unknown, as is aforesaid, or intent to delay or defraud their Creditors deceitfully by Covin or Collusion'.[9] These statutory defined acts demonstrated the debtor's intent to delay, obstruct, or defraud their creditors, and can be seen as the law's attempt to identify failure. Throughout the seventeenth and eighteenth centuries, bankruptcy

[5] The full list of statutes concerning bankruptcy for this period are, 34 & 35 Henry VIII c.4 (1543); 13 Elizabeth I c.7 (1571); 1 James I c.15 (1603); 21 James I c.19 (1624); 4 & 5 Anne I c.4 (1706); 6 Anne c.22 (1707); 10 Anne c.15 (1711); 7 Geo 1 c.31 (1720); 5 Geo 2 c.30 (1731); 19 Geo 2 c.32 (1745).
[6] 13 Elizabeth. I c.7 (1571).
[7] Julian Hoppit, *Risk and Failure in English Business 1700-1800* (Cambridge: Cambridge University Press, 1987), p.24.
[8] Ibid, pp.24-25.
[9] 34 & 35 Henry VIII c.4 (1543).

statutes provided a growing list of specific acts that would be considered actionable. The statute of 5 Geo 2 (1731) described sixteen ways in which a debtor could evade a creditor's demands, the most common of which were absconding or keeping house.[10] It was from this point whereby an individual became a bankrupt in the eyes of the law and the wider community, as they were seen to have disturbed the social order by removing themselves from public view and concealing their activities. Committing an act of bankruptcy was a definitive sign that a debtor could no longer maintain their economic commitments. As such, absconding was simultaneously a criminal act, as well as a way in which traders established that an individual was no longer creditworthy.

In this manner, the 1543 act was intended to improve the efficiency of debt collection. The wording of the statute took aim at 'divers and sundry Persons', who 'craftily obtaining into their Hands Mens Goods, do suddenly flee to Parts unknown, or keep their Houses, not minding to pay or restore to any their Creditors, their Debts and Duties'. Such action was seen to be, 'against all Reason, Equity and good Conscience'.[11] Indeed, while there are several accounts of the etymology of the word 'bankruptcy', they all agree that it was initially used around the Mediterranean to refer to traders who ran away from their debts.[12] Similarly, while the modern use of the word 'absconding' is now rare, during the early modern period it was employed widely to connote being hidden from view, or to flee into hiding or an inaccessible place, 'typically to elude a creditor, escape from custody, or avoid arrest'.[13] From its very creation as a legal principle, bankruptcy was associated with the criminal act of absconding in an attempt to avoid repayment of just debts. Finally, a debtor had to have owed

[10] 5 Geo 2 c.30 (1731); 16 acts of bankruptcy are listed in the following publication, Edward Green, *The Spirit of the Bankrupt Laws Wherein are Principally Considered, the Authority and Power of the Commissioners* (London: 1767), pp.37-38; see Emily Kadens, 'The Last Bankrupt Hanged: Balancing Incentives in the Development of Bankruptcy Law', *Duke Law Journal*, vol.59, no.7 (2010), pp.1229-1319, p.1241.
[11] 34 & 35 Henry VIII c.4 (1543).
[12] Jukka Kilpi, *The Ethics of Bankruptcy* (London: Routledge, 1998), p.10.
[13] OED.

more than £100 to one creditor, £150 to two or more creditors, or £200 to three or more creditors.[14] Again, this stipulation was straightforward in theory, but as William Jones has surmised, this benchmark was often a fiction, declared in order to initiate proceedings, and often including the total value of penalties as well as the actual capital debt.[15] Ultimately, this is just a basic overview of the three main legal stipulations applied to bankruptcy. In their day-to-day implementation, these were far more complicated.

Turning to bankruptcy procedure, the statute of 13 Elizabeth I (1571) created the position of bankruptcy commissioners, and any creditor could petition the Lord Chancellor, and a 'commission of bankruptcy' would be granted as a matter of course upon their *ex parte* [with respect to or in the interests of one side only] evidence.[16] This meant that a debtor was forced into bankruptcy proceedings as modern notions of voluntary bankruptcy did not appear in England until the middle of the nineteenth century.[17] The Chancellor directed each bankruptcy to a group of five individuals, although only three needed to sit to be quorate. The statute specified that these individuals were expected to be 'wise and honest discreet persons'.[18] In 1619, Francis Bacon ordered that at least one commissioner must be someone learned in the law, and Jones has stated that 'this became more or less the rule'.[19] As such, commissioners were not government officials, but were instead private individuals — usually

[14] 21 James I c.19 (1624).
[15] W. J. Jones, 'The Foundations of English Bankruptcy: Statutes and Commissions in the Early Modern Period', *Transactions of the American Philosophical Society*, vol.69, no.3 (1979), pp.1-63, p.31.
[16] 13 Elizabeth I c.7 (1571); this process has been referred to in numerous different ways, but for clarity and consistency, the process will be referred to as a commission of bankruptcy throughout. For example, both Thomas Goodinge and Thomas Davies refer to 'commission of bankrupts' and a 'commission of bankruptcy' throughout their publications, Thomas Goodinge, *The Law Against Bankrupts*, fourth edition (London: 1726); Thomas Davies, *The Laws Relating to Bankrupts* (London: 1744).
[17] Voluntary bankruptcy was introduced for merchants in 1841, 7 & 8 Victoria c.96 (1841), and for non-merchants in 1861, 24 & 25 Victoria c.134 (1861); voluntariness was abolished in 32 & 33 Victoria c.71 (1869), but was restored in 46 & 47 Victoria c.52 (1883).
[18] 13 Elizabeth I c.7 (1571); Jones, 'The Foundations of English Bankruptcy', p.25.
[19] Ibid, p.26.

solicitors or barristers — paid out of the proceeds of the bankrupt's estate.[20] However, it has been estimated that a commissioner during this period could earn around £300 per year in fees. William Holdsworth has suggested that such a sum could not secure capable individuals to deal with a business as difficult as that of bankruptcy, as commissioners 'were either young men who might be competent, but who were inexperienced, or old men who were experienced, but incompetent'.[21] Ian Duffy has shown that by 1831, the average wage had only risen to approximately £380, which derived from charging a £1 fee for every meeting.[22] Indeed, because commissioners were not paid the going rate for professional barristers, Hoppit has claimed that accusations of inefficiency were commonplace, as commissioners 'were either young, lively, and inexperienced or old, pedestrian and experienced'.[23] During the reign of Charles I, professional commissioners in London began to execute bankruptcy proceedings, and the practice had become so familiar throughout the eighteenth century that permanent lists of commissioners existed. By the late eighteenth century, one publication listed sixty five commissioners, who were separated into thirteen lists of five.[24] Outside of London, there were no set lists and the petitioning creditor's solicitor usually nominated commissioners from the local community, who would be confirmed by the court.[25] In 1743, *The Law For and Against Bankrupts*, published by a 'Commissioner of Bankrupts', stated that the cost of opening a commission was at least £50.[26] This process would obviously decrease the bankrupt's estate and any subsequent payments made to creditors.

[20] Gerard Malynes, *Consuetudo, Vel, Lex Mercatoria: Or, The Ancient Law-Merchant*, third edition (London: 1686), p.158.
[21] W. S. Holdsworth, *A History of English Law*, 16 vols. (London: Methuen and Co. Ltd., 1926-1966), vol.1, p.472.
[22] Ian P. H. Duffy, *Bankruptcy and Insolvency in London During the Industrial Revolution* (London: Garland Publishing, 1985), p.35.
[23] Hoppit, *Risk and Failure in English Business*, p.37.
[24] *A Succinct Digest of the Laws Relating to Bankrupts* (Dublin: 1791), p.3.
[25] Michael Lobban, 'Bankruptcy and Insolvency', in John Baker ed., *The Oxford History of the Laws of England* (Oxford: Oxford University Press, 2010), vol.12, pp.786-787.
[26] *The Law For and Against Bankrupts* (York and Scarborough: 1743), p.166.

Once the Lord Chancellor had assigned commissioners, then the substantial work of the commission could begin. Commissioners were tasked with investigating whether a debtor could be declared a bankrupt within the legal stipulations outlined above. Only if, and when, these three conditions had been met was a debtor declared a bankrupt in the legal sense of the word. Hoppit has estimated that throughout the eighteenth century, this process of investigation confirmed that a debtor was a bankrupt in four out of every five instances. This meant that in twenty per cent of cases, the commissioners could not satisfy the legal criteria and the debtor was not considered a bankrupt within the true intent and meaning of the statutes.[27] In order to give notice to the debtor that a commission had been taken out, the 1571 statute required commissioners to ensure that a proclamation was made in the appropriate market place on five market days. Under the statute of 1 James I (1604), lawful warning was to be left in writing on three occasions where the bankrupt lived the previous year.[28] It became established that commissioners notified the debtor through an advertisement in the *London Gazette*, ordering them to surrender for investigation. In theory, these notifications made a commission of bankruptcy a 'matter of record', meaning it was the responsibility of the community to take notice of the proceedings. At this stage, all creditors with a legitimate claim would need to come forward and pay their contribution money towards the running of the commission.[29] The extent to which a commission was known to the public, and the degree to which creditors voluntarily paid and entered the commission, is examined in greater detail in chapter two.

When the commissioners had made their declaration, they placed a further notification in the *London Gazette*, ordering the bankrupt to surrender all of their property. Their place of

[27] Hoppit, *Risk and Failure in English Business*, p.36.
[28] 1 James I c.15 (1603); Jones, 'The Foundations of English Bankruptcy', p.26.
[29] Ibid, p.34.

residence — and if a business owner, place of work — would be searched, and all goods seized. A meeting of the creditors would be arranged, whereby assignees would be elected — usually the largest creditors — to collect and distribute the bankrupt's estate. Simultaneously, creditors would prove their debts to the commissioners as assignees collected, appraised, and sold the bankrupt's estate. Depending on the circumstances, this could be a lengthy and complicated affair, especially when there were multiple claims on issues such as property, inheritance, and marriage contracts. As such, it was not uncommon for multiple dividends to be issued.[30] Throughout this period, assignees were not only able to take the bankrupt's property, but also anything they held in their 'possession, order and disposition' which belonged to another person at the time of their bankruptcy.[31] This rule was designed to ensure that secret creditors would not maintain the bankrupt's solvency, deceiving others and giving credit to someone who appeared to have more assets than they held in reality. For example, if a debtor sold his goods to another under a bill of sale, but kept possession of them, then the goods would be liable to the commission of bankruptcy.[32]

The commissioners themselves held certain statutory power, which greatly increased throughout the seventeenth century. The sixteenth-century statutes granted the commissioners authority to call before them, and examine under oath, any person who may be indebted to the bankrupt, or have any of the bankrupt's goods in their possession. This could be done by any means the commissioners 'shall think meet and convenient'.[33] The 1604 act clarified that commissioners could examine the bankrupt himself, while the 1624 statute extended their authority to examine the wife of the bankrupt, as well as allowing commissioners to break down the door and forcibly enter the house of a bankrupt, something which had previously

[30] Hoppit, *Risk and Failure in English Business*, p.37.
[31] 21 Jac. I c.19 (1624).
[32] Lobban, 'Bankruptcy and Insolvency', p.789.
[33] 34 & 35 Henry VIII c.4 (1543); quote at 13 Elizabeth I c.7 (1571).

been forbidden under common law.[34] As witnesses were sworn under oath, they were subject to the same charges of perjury as if they were giving evidence in any other court of the realm, while those failing to attend could be imprisoned.[35] If the bankrupt was found guilty of concealing goods or behaving in a fraudulent manner, then they could be sentenced to stand in the pillory for two hours, and have one of their ears nailed to the pillory, and subsequently removed.[36] As one commentator summarised in 1678, commissioners 'have power to administer an Oath, to send to Prison, to release out of Prison; they can break open Houses, seize Goods, sell them, extend Lands, and in short, do any thing for the advantage of the Creditors'.[37] Ultimately, the aim of legislation throughout the sixteenth and early seventeenth centuries was to increase the coercive powers of commissioners in an attempt to prevent fraud and abuse of the legal system.[38]

In analysing these early statutes, it becomes clear that bankruptcy was created as a legal status in order to increase the collection powers of creditors over fraudulent debtors. The bankrupt was viewed as a criminal, with the 1543 statute referring to the debtor as an 'offender'.[39] As Emily Kadens concludes, 'the law's sole concern was that creditors should be repaid, while the interests of the debtor were ignored'.[40] Indeed, the main characteristic of bankruptcy procedure was that all creditors would join together in a single action, whereby the entirety of the bankrupt's goods and estate would be collected and evenly distributed according to each creditor's individual claim. Finally, creditors retained a legal right to the

[34] 1 James I c.15 (1603); 21 James I c.19 (1624); the statute of 4 & 5 Anne I c.4 (1706) further extended the commissioners' authority to examine any person who may have information about the bankrupt's estate, or any acts of bankruptcy committed.
[35] Goodinge, *The Law Against Bankrupts*, p.69.
[36] 21 James I c.19 (1624); Kadens, 'The Last Bankrupt Hanged', p.1247.
[37] John Vernon, *The Compleat Comptinghouse* (London: 1678), p.185.
[38] Duffy, *Bankruptcy and Insolvency in London During the Industrial Revolution*, p.9.
[39] 34 & 35 Henry VIII c.4 (1543).
[40] Kadens, 'The Last Bankrupt Hanged', p.1236; see also Emily Kadens, 'The Pitkin Affair: A Study of Fraud in Early English Bankruptcy', *American Bankruptcy Law Journal*, vol.84, no.4 (2010), pp.483-570.

bankrupt's future earnings until their debts had been satisfied in full, meaning that the collection and distribution of the bankrupt's estate continued while the commission remained in force. After completion, it was also theoretically possible for individual creditors to pursue other legal avenues, including suing the bankrupt in the common law courts, or keeping the bankrupt in prison, until the entirety of the debt was repaid.[41] As such, the law made no distinction between the criminal, fraudulent bankrupt, and the unfortunate insolvent who had failed due to loss or misfortune. While it was necessary to have the bankrupt co-operate in the legal process, it was assumed throughout the seventeenth century that the simple threat of punishment would coerce the debtor into compliance.[42]

However, in 1706 the statute of 4 & 5 Anne — and then the clarifying act of 6 Anne (1707) — dramatically altered bankruptcy law in England, as for the first time, it enabled creditors to discharge a bankrupt from future liability, as long as four fifths by number and value agreed.[43] If the estate paid 8 shillings in the pound, a further provision entitled the bankrupt to five per cent of the estate recovered — provided this did not exceed £200 in value — so as not to leave them destitute throughout the proceeding.[44] Essentially, a discharge meant that creditors were not only abrogating their legal right to full repayment, but also giving part of the estate back to the debtor.[45] Modern historians have seen this as a monumental evolution of the bankruptcy laws. John C. McCoid II has suggested that the discharge provision, 'ranks

[41] Ibid, pp.1242-1243.
[42] Ibid, p.1235.
[43] 4 & 5 Anne allowed the commission to decide on discharge, 6 Anne made this a decision of the creditors, 4 & 5 Anne I c.4 (1706); 6 Anne c.22 (1707). There has been some confusion in the existing literature on the dating of this act, as an English statute was dated according to the year of the first day of the parliamentary session. This began in October 1705, but the act only passed the two houses of parliament and received royal assent in March 1706. Thus, the act is commonly referred to as either 1705 or 1706, but for historical accuracy, it is necessary to understand that the act did not come into force until 1706. For a discussion of such confusion, see Kadens, 'The Last Bankrupt Hanged', p.1237.
[44] 4 & 5 Anne I c.4 (1706).
[45] Ann M. Carlos, Edward Kosack and Luis Castro Penarrieta, 'Bankruptcy Discharge and the Emergence of Debtor Rights in Eighteenth Century England', *Enterprise & Society*, vol.20, no.2 (2019), pp.475-506.

ahead in importance of all others in Anglo-American bankruptcy history', as it was 'the ultimate instrument of the transformation of bankruptcy from a creditors' collection remedy to a system of statutorily mandated composition mutually beneficial to debtors and creditors'.[46] Similarly, Charles Jordan Tabb has shown how 4 & 5 Anne became a model for American legislation after independence.[47] As well as attempting to incentivize cooperation, the 1706 statute also made fraudulent bankruptcy — defined as a debtor's failure to fully disclose assets before a commission of bankruptcy — a capital offence. Kadens suggests that the 1706 act was the first juncture whereby the law sought to obtain the assistance of a debtor in their financial dismantling, by simultaneously incentivising and coercing debtors into cooperation. Discharge was intended to entice the debtor to be honest, while fraudulent bankruptcy was made a capital offence. For Kadens, coercing the debtor to be honest proved a failure, whereas the beginning of 'incentivised cooperation' went on to have a 'fruitful future'.[48] Despite these alterations in the law, Kadens concludes that fraud continued to occur, partly because 'the benefits promised by discharge were too often unobtainable', leading to what she describes as 'a fraudulent debtors' playground'.[49]

In order to understand early modern bankruptcy procedure, it is necessary to pay close attention to the individuals who undertook these roles. It is now a commonplace that the success of any insolvency or bankruptcy procedure, at any time in history, is largely

[46] John C. McCoid II, 'Discharge: The Most Important Development in Bankruptcy History', *American Bankruptcy Law Journal*, vol.70, no.2 (1996), pp.163-193; p.164, p.192; see also Margit Schulte Beerbühl, who claims that the discharge provision can be seen as a turning point in the history of bankruptcy legislation, as it 'introduced for the first time the possibility of a discharge from debt and a debt-free fresh start for the honest traders', Margit Schulte Beerbühl, 'Introduction', in Albrecht Cordes and Margit Schulte Beerbühl eds., *Dealing With Economic Failure: Between Norm and Practice (15th to 21st Century)* (New York: Peter Lang, 2016); pp.9-26, p.17.
[47] Charles Jordan Tabb, 'The Historical Evolution of the Bankruptcy Discharge', *American Bankruptcy Law Journal*, vol.65, no.3 (1991), pp.325-371.
[48] Kadens, 'The Last Bankrupt Hanged', p.1229.
[49] Ibid, p.1289, p.1272.

dependent upon those who administered it.[50] This was no different in early modern England. What is important to note, is that if this process went smoothly, then the entire procedure would be executed, conducted, and completed outside the jurisdiction of the court of Chancery. However, given that commissioners were private citizens paid from the bankrupt's estate — and the assignees who collected and distributed the estate were also creditors — Kadens has concluded that 'bankruptcy was essentially a private matter largely controlled by those who would benefit from it with little oversight from the courts and susceptible to both corruption and incompetence'.[51] Coupled with the complex nature of untangling multiple claims on incoming and outgoing accounts, several suits were issued in Chancery which took direct aim at the manner in which the commission itself had undergone its business. While this is just one reason why cases were initiated in Chancery — which is explained in greater detail in the next section in relation to Chancery's equitable jurisdiction — this means that all cases utilised in this thesis concerned commissions of bankruptcy that required the overarching authority of the court.

Alternative Forms of Debt Recovery

Official bankruptcy procedure was just one of several routes available to early modern creditors. In 1786, Josiah Dornford outlined the three classes of debtors that were established in the law: 'The first under the description of Merchants and capital Traders. The second of Tradesmen, Mechanics, and Artificers, in the middle walk of life. The third, of the lower orders of Journeymen, of Laborers, and Domestics'.[52] These three distinctions were further intended to distinguish the size of indebtedness, from largest to smallest. In theory, the first class of debtor were to recover debts through bankruptcy proceedings, the second through the

[50] Ulrich Falk and Christoph Kling, 'The Regulatory Concept of Compulsory Composition in the German Bankruptcy Act', in Cordes and Beerbühl eds., *Dealing With Economic Failure*, pp.215-242.
[51] Kadens, 'The Last Bankrupt Hanged', p.1243.
[52] Josiah Dornford, *Seven Letters to the Lords and Commons of Great Britain, Upon the Impolicy, Inhumanity, and Injustice, of Our Present Mode of Arresting the Bodies of Debtors* (London: 1786), p.9.

insolvency process, and the third via small debt courts. However, as Ian Duffy has claimed, by the time of publication, 'this neat classification was rapidly becoming obsolete' as 'increased economic activity was blurring occupational boundaries'.[53] Generally speaking, the avenues available to creditors can be separated into unofficial recovery outside of the law, and official legal procedures.

Outside of the law, failure could be dealt with via numerous agreements between debtors and creditors. For example, a creditor could grant a debtor a letter of licence to carry on their business in order to repay debts, or could issue a deed of inspection, whereby the debtor continued in business under the control of creditors. In both of these examples, creditors did not think the debtor had permanently failed, or else it would be in their interest to seize and release their assets as quickly as possible. If this were the case, then a composition could be enacted, whereby the debtor's assets were placed in the possession of trustees, acting on behalf of all of the creditors.[54] While this took place outside official bankruptcy procedure, many early modern contemporaries praised compositions for being cheap and efficient, with one suggesting that compositions were themselves 'private bankruptcies'.[55] The main difference between compositions and a commission of bankruptcy was that the administration of the debtor's estate remained firmly in the control of the creditors, and not handed over to external administrators. However, one crucial weakness of this mode of debt recovery was that it depended on the full cooperation of all of the creditors. If one creditor stood out against a composition — for example, because they felt they deserved, or could gain, repayment in full — then the only recourse for the remaining creditors was through official bankruptcy proceedings.[56] As Hoppit has concluded, while unofficial means of dealing with failure 'were

[53] Duffy, *Bankruptcy and Insolvency in London During the Industrial Revolution*, p.56.
[54] Hoppit, *Risk and Failure in English Business*, pp.29-30.
[55] B. Montagu, *A Summary of the Law of Composition with Creditors* (London: Joseph Butterworth and Son, 1823), p.39.
[56] Hoppit, *Risk and Failure in English Business*, pp.30-31.

superficially attractive they were of limited applicability'.[57] Bankruptcy procedure offered greater authority and a more certain outcome, as it 'was the only legally constituted method that put all creditors on an equal footing, forced the debtor to comply and acknowledged a permanent inability on his part to meet all his obligations'. Furthermore, bankruptcy was the only process that investigated the debtor closely about their effects, assets, and personal circumstances.[58] Early modern contemporaries were well aware that the statutes were intended to be interpreted for the benefit of all of the creditors. As one anonymous tract surmised, 'The common End of all the Laws relating to Bankrupts, is to discover and collect the Estate of the Debtor, in the best and speediest Manner, in order to make an equal Distribution of it among all Creditors'.[59] Thomas Goodinge's *The Law Against Bankrupts* was the first English treatise on bankruptcy, explaining the bankruptcy statutes with reference to resolutions, judgements and decrees from both the common law courts and Chancery suits. Originally published in 1694, it was reissued several times before the fourth and final edition was published in 1726, as what one scholar has termed 'the standard contemporary textbook' of the era. Goodinge concludes that 'He that is a Bankrupt to one Creditor, is a Bankrupt to all'.[60]

Outside of official bankruptcy procedure, a creditor could seek recovery through the common law courts. By the eighteenth century, debt collection in the three main civil jurisdictions — King's Bench, Common Pleas, and Exchequer of Pleas — offered plaintiff-creditors the prospect of potentially low-cost, quick, and predictable recovery. Clinton Francis has suggested that creditors were attracted to common law litigation for three reasons: 'a

[57] Ibid., p.32.
[58] Ibid, p.34.
[59] *Considerations Upon Commissions of Bankrupts* (London: 1727), p.4.
[60] Goodinge, *The Law Against Bankrupts*, pp.145-146; Peter Earl calls this 'the standard contemporary textbook', Peter Earle, *The Making of the English Middle Class: Business, Society and Family Life in London, 1660-1730* (London: Metheun, 1989), p.363, n.32.

predictable jury outcome, a "loser-pays-all-costs" rule, and a system of pretrial and posttrial process enforced by arrest and imprisonment'.[61] In contrast to the bankruptcy system, a few points are worth making. Firstly, a common feature of this form of debt recovery is that creditors acted individually, without joining other creditors in a collective action. Secondly, this approach would only be attractive if the debtor was seen to be solvent, as the common law viewed the debtor as being recalcitrant, rather than being unable to repay. In this manner, a creditor could utilise the force of the law to proceed against either the debtor's property or their body by incarceration to encourage repayment. Finally, the vast majority of common law cases concerned either proof of contract or the issue of a defendant's satisfaction of the debt claimed. As such, if a creditor could 'prove their debt' in the form of a written obligation — especially bonds, bills of exchange, and promissory notes — then they held a high probability of recovering their debt in full.[62]

Finally, a creditor could order a debtor to be brought before one of the common law courts to attend a hearing of a suit, either by a simple summons or by having them arrested and held to bail. If they defaulted on bail, then they could be imprisoned. If the debt was subsequently proved to be good, the creditor could choose to proceed 'in execution' either against the property of the debtor, or against their body by detaining them in prison, almost as an insurance policy or assurance against future repayment. Ultimately, this meant that two types of imprisonment were possible, on mesne process — pre-trial — or on final process — post-trial — until the debt was repaid or a composition made. Critics of this procedure singled it out as providing extraordinary discretionary powers to creditors, in what Joanna Innes has described as a form of 'legalized bullying'.[63] What is clear, is that such an oppressive and

[61] Clinton W. Francis, 'Practice, Strategy, and Institution: Debt Collection in the English Common-Law Courts, 1740-1840', *Northwestern University Law Review*, vol.80, no.4 (1986), pp.807-955, p.811.
[62] Ibid, p.812.
[63] Jonna Innes, *Inferior Politics: Social Problems and Social Policies in Eighteenth-Century Britain* (Oxford: Oxford University Press, 2009), p.229.

capricious legal system provided creditors with a vast array of powers, while simultaneously presenting several opportunities and motivations for debtors to avoid arrest. There were several options available to both creditors and debtors within this system, ranging from mutually beneficial agreements, to outright fraud. It is important to understand these options, as while bankruptcy procedure was just one of the available avenues, it was common for individuals to have been involved in several procedures at any given moment. As such, bankruptcy suits in Chancery frequently referred to previous attempts to recoup debts.

The Court of Chancery

Having established the function and operation of a commission of bankruptcy, this section focuses on the procedure of the court and the development of the equitable jurisdiction of Chancery. Throughout the thesis, close attention will be paid to the administration of the court and the individuals who undertook the work in creating and filing the documents that have survived. While this will be explored in greater detail at the beginning of each chapter, here I will provide a brief overview of the hierarchy of the court, before examining its procedure in greater detail. The section will then analyse how the formal structure of the court and the jurisdiction of bankruptcy underwent a dramatic re-evaluation, as Lord Chancellor Nottingham — 1673-1682 — attempted to regulate the implementation of equitable principles of justice.

The Procedure of the Court

The process, procedure, and decision making in Chancery were governed by the Lord Chancellor. William Jones has suggested that during the sixteenth century, the Lord Chancellor's governmental importance continued to decline, and the Chancellor was

regarded, ‘first and foremost as a judge, and it is not surprising that a post once associated with ecclesiastics was to become a prize for some of the greatest common lawyers in the land’.[64] Sir Thomas More — Lord Chancellor 1529-1544 — was the first of these modern lawyer-Chancellors, but there continued to be statesmen and ecclesiastics appointed throughout the sixteenth century. Thomas Egerton — later Lord Ellesmere 1596-1617 — and Francis Bacon — 1617-1621 — were two prominent lawyers who worked towards establishing the modern procedure and jurisdiction of the court, making Chancery an equal, if not superior, authority compared to the common law courts.[65] Indeed, after the tenure of Bacon, only two Chancellors — John Williams 1621-1625 and the Earl of Shaftesbury 1672-1673 — were not practicing lawyers.[66] By the late seventeenth century, Chancery was a distinct institution, with a legally trained Lord Chancellor, who was appointed by the monarch, at the head of an established bureaucracy.

From the reign of Henry VIII, the Lord Chancellor was assisted in his duties by the Master of the Rolls, the chief of the Masters in Chancery, who was appointed by the monarch. As well as the Master of the Rolls, the court employed Masters in Ordinary, initially eleven in number, which had been reduced to ten by the late seventeenth century. Throughout the sixteenth century, the Master of the Rolls was delegated a particular jurisdiction by special commission, empowering him to hear general cases. This elevated his standing above that of the other Masters, essentially creating the position of general deputy to the Lord Chancellor. By the seventeenth century, it had become accepted that in the absence of the Lord Chancellor, the Master of the Rolls could hear causes and make orders and decrees under his

[64] W. J. Jones, *The Elizabethan Court of Chancery* (Oxford: Clarendon Press, 1967), p.7.
[65] See J. H. Baker, ‘The Common Lawyers and the Chancery: 1616’, *Irish Jurist*, vol.4 (1969), pp.368-92.
[66] While Shaftesbury was educated as a lawyer he had never practised, and Holdsworth has stated, ‘it was no doubt a scandal that a non-lawyer should be made Chancellor at that date, for the rules of Equity were fast developing into a settled system’, Holdsworth, *A History of English Law*, vol.1, pp.410-411.

own authority.[67] This assumption was eventually confirmed by legislation enacted by the statute of 3 George II (1729), which declared that all orders made by the Master of the Rolls were valid, subject to appeal to the Chancellor.[68] However, even after the clarifying act, the authority of the Master of the Rolls was limited by the requirement that he act in conjunction with at least two of the Masters in Ordinary, or two common law judges, while the enrolment of final decisions — known as decrees — still required the signature of the Chancellor.[69] For clarity, the term 'Master' is utilised throughout the thesis to refer to the ten Masters in Ordinary, while the term 'judge' refers to the presiding authority of either the Lord Chancellor or the Master of the Rolls.

In the early history of the court, Masters' duties were various and general in their nature, meaning it was necessary for a Master to be acquainted with the common law as well as the canon and civil law.[70] Holdsworth has suggested that throughout the medieval period, Masters were referred to by various titles, all of which demonstrated that they were assistants to the Chancellor. One example can be seen in their comparison to the *pedanei judices* of the later Roman law, as the Chancellor could delegate the duty of hearing and reporting upon certain parts of a case.[71] However, this system of delegation seems to have been utilised to excess prior to the seventeenth century, and under a 1618 order from Francis Bacon, their role was defined and restricted. This order, coupled with the growing jurisdiction and increased business of the court, meant that their role became specialised, with their chief duty

[67] Ibid, vol.1, pp.416-420.
[68] 3 George II. C.30 (1729); The new office of Vice Chancellor was not created until 1813, see Michael Lobban, 'Preparing for Fusion: Reforming the Nineteenth-Century Court of Chancery (part 1)', *Law and History Review*, vol.22, no.2 (2004), p.389-427, p.393; Michael Lobban, 'Preparing for Fusion: Reforming the Nineteenth-Century Court of Chancery (part 2)', *Law and History Review*, vol.22, no.3 (2004), pp.565-599.
[69] Henry Horwitz, *A Guide to Chancery Equity Records and Proceedings 1600-1800* (Kew, Surrey: Public Record Office Handbook No.27, 1995), p.9.
[70] For a detailed historical account of the role of the Chancery Master, see Edmund Heward, *Masters in Ordinary* (Chichester: Barry Rose, 1990).
[71] Holdsworth, *A History of English Law*, vol.1, pp. 416-418.

confined to reporting on specific matters referred to them.[72] As such, the ten Masters in Chancery played an increasingly important role in the court as a fact-finding agency, to whom the Lord Chancellor referred a range of matters which were pertinent to the outcome of a suit. At the beginning of the seventeenth century, the majority of the Masters of the Rolls and the eleven Masters in Ordinary were Doctors of Civil Law, having been trained at Oxford and Cambridge. However, by the late seventeenth century, civil lawyers became a declining minority amongst Masters.[73] As well as these officials, the court also had recourse to Masters Extraordinary, appointed because of the pressure of the business of the court, or to handle inquiries best pursued in the localities, although Henry Horwitz has suggested that this only occurred 'on occasion'.[74]

Below the Masters in the hierarchy of the court were the Six Clerks. Initially, the Six Clerks were the attorneys of Chancery, with a monopoly of acting for complainants in the court. Yet, by the 1620s — having just rebuilt their offices in Chancery Lane after a fire destroyed their previous quarters — they were well on the way to being sinecurists. Holdsworth has stated that as the business of the court grew, it made it impossible for the Six Clerks to continue to act as solicitors to the parties. Instead, parties began to employ the assistants to the Six Clerks, known as the Under Clerks — eventually converted into Sworn Clerks by order of Lord Keeper Bridgeman in 1668 — and from the beginning of the seventeenth century their own solicitors.[75] From around 1711, the Sworn Clerks began to urge a reduction of their own number — originally 90 in 1688 — by not filling the position when it was left vacant by death. This approach was officially adopted by the Master of the Rolls in 1718 and reduced their number to 65 by the 1730s, before reaching its lowest number of 47 in 1776. Such a

[72] Ibid, vol.1, p.418.
[73] Horwitz, *A Guide to Chancery Equity Records,* p.2.
[74] Ibid, p.80, n.29.
[75] Ibid, p.14; Holdsworth, *A History of English Law*, vol.1, pp.422-433.

decline in officers obviously left fewer Sworn Clerks to deal with a similar case load, increasing the duration of suits.[76] Indeed, in a pamphlet from the middle of the eighteenth century, the Sworn Clerks defined themselves as 'the only Attorneys of the Court' and their primary function was 'to file all the Pleadings … and to do all other Acts of Attorneys'.[77] Horwitz has suggested that throughout the seventeenth century, most suitors 'employed their own solicitors to look after the management of their suits and feed counsel to advise on strategy and to argue their positions when formal hearings were held'.[78] As such, there was a dramatic increase in privately employed legal experts to supplement the work of the court at every stage of proceeding.

Turning to the procedure of the court, during the course of the sixteenth century, Chancery became a tribunal — in the form of a trial process — in which each stage of proceeding was recorded in writing.[79] The initiation of a suit began by the complainant — or plaintiff — filing a written bill of complaint. In principle, these bills were supposed to follow a standard tripartite format, with the plaintiff stating their name, place of abode, and their status and/or occupational ascription. They would then set out the facts and pertinent details of their complaint, before explaining that it was impossible to secure a remedy without the court's action and asking for a subpoena for the appearance of the defendant(s).[80] By the seventeenth century, a further standard allegation of confederacy between the named defendants and unnamed other parties had been added in a set phrase or convention: the defendants had 'combined and confederated' against the plaintiffs 'with persons unknown' to 'defeat or

[76] Henry Horwitz, 'Record-Keepers in the Court of Chancery and Their "Record" of Accomplishment in the Seventeenth and Eighteenth Centuries', *Historical Research*, vol.70, no.171 (1997), pp.34-51.
[77] *The Case of the Sworn Clerks, and Waiting Clerks of the Six Clerks Office* (London: 1749?) p.1.
[78] Horwitz, *A Guide to Chancery Equity Records*, p.14.
[79] Ibid, p.3.
[80] Ibid, pp.3-4.

defraud' them.[81] This allowed for the inclusion of additional defendants to the bill at a later date.[82]

During the Elizabethan period, defendants had to physically appear in court to be sworn under oath.[83] However, throughout the seventeenth century, the court became more flexible in a number of ways. Firstly, those living outside of London could give their answer to a commission created for that purpose. The commission would be accompanied by a copy of the complainant's bill — at an additional cost to the defendant — until the requirement was abolished in 1706 after recurrent complaints of the unnecessary costs. Secondly, it became acceptable for a legal representative to appear in court in place of the defendant to provide an answer, but again, such answers would have to be taken under oath. Finally, legislation in 1732 meant that after public advertisement in the *London Gazette*, a suit might proceed *ex parte*, and if necessary, render judgement in the absence of the defendant. However, it appears that even after 1732, the court was reluctant to proceed without the answer of the defendant, which inevitably led to further delays.[84] Aside from the most common response of a sworn answer, several alternatives were available to a defendant, all of which were to be presented in written form. A disclaimer took the defendant out of the suit by disavowing any interest in the matter and ceding any claim that he might be thought to have in the matter in complaint. A plea sought to raise an objection to a point in law, seeking to forestall the complaint. This would often be in relation to questions of jurisdiction, whereby the defendant felt that this was not a matter to be heard in equity, but rather in a court of common law or an ecclesiastical court. A demurrer sought to evade the force of the complaint by admitting the

[81] Clayton, 'The Wealth of Riches to be Found in the Court of Chancery', pp.25-31.
[82] Horwitz, *A Guide to Chancery Equity Records*, p.14; for a specific example and further discussion of confederacy, see Christine Churches, '"Equity Against a Purchaser Shall Not Be": A Seventeenth-Century Case Study in Landholding and Indebtedness', *Parergon*, vol.11, no.2 (1993), pp.69-87, p.78.
[83] Jones, *The Elizabethan Court of Chancery*, p.214.
[84] Horwitz, *A Guide to Chancery Equity Records*, p.16.

truth of the complainant's factual allegations, but arguing that such facts did not present a cause which they might reasonably answer. Demurrers were often referred to a Master for recommendations for acceptance or rejection, while pleas surrounding a clear-cut point of law would be referred to common law judges. If either were rejected, then the defendant would need to submit an answer. As such, it was not uncommon for defendants to submit both simultaneously, so that if the demurrer or plea was rejected, the suit would go forward on the basis of the answer. One final option was to file a cross-bill, making the complainant the defendant in a second but inter-related suit.[85] The bill and the defendant's response were known collectively as 'the pleadings'.

One of the main reasons a complainant would file a bill in Chancery was to secure an injunction, which took two forms. A 'common injunction' would prevent the defendant from continuing a case that had already been executed in another jurisdiction, most commonly a common law court; whereas a 'special injunction' would prevent the defendant from undertaking any action that would irreparably damage the plaintiff. Horwitz uses the common example of a special injunction being executed to 'bar the committing of waste on a tenement in which the plaintiff claimed an interest'.[86] Requests for injunctions were granted as a matter of course and stayed in force until the defendant answered, and in some circumstances, until the cause had been heard and concluded in Chancery.[87] As well as these core documents, there was always the possibility for additional documentation to be added to the pleadings. For example, it was common in bankruptcy suits for defendants to add schedules of account — usually simply written at the end of an answer on the same piece of parchment — to support their position. Similarly, a complainant might offer exceptions to an answer, claiming

[85] Ibid, pp.14-15; Holdsworth, *A History of English Law*, vol.9, pp.376-408; Jones, *The Elizabethan Court of Chancery*, p.208.
[86] Horwitz, *A Guide to Chancery Equity Records*, p.3.
[87] Ibid, p.3.

that it ‘contained impertinent or scandalous matter’, or that it simply did not admit or deny the allegations in the bill, and was therefore insufficient. The defendant was then required to submit a ‘further answer’. While in theory this process could go back and forth — the plaintiff submitting a replication and the defendant replying with a rejoinder — Horwitz has concluded that before the eighteenth century, ‘bill, answer, and replication constituted the normal pleadings’.[88] However, in certain circumstances — for example, if a party had died, there was a change in a woman’s marital status, or if the deadline for further action had passed — the suit would be ‘abated’ and could only be reinstated by way of a bill of revivor. In these circumstances, it was common for plaintiffs to add a supplementary bill of complaint in order to broaden the scope of the pleading.[89] Ultimately, it was the parties who determined the pace at which the suit proceeded, as while the court had deadlines to abide by, it was up to the parties to observe and enforce these rules. This of course gave rise to multiple possibilities to employ delay tactics which could add to the cost of a suit.[90]

Once a suitable reply has been submitted, then the case could proceed to the evidential stage of proceeding. Most commonly, this took the form of depositions, whereby lists of questions — known as interrogatories — were submitted by parties in the suit and their answers — called depositions — were transcribed by clerks of the court to be sealed, and if necessary, read out upon the hearing of the cause at a later date. If the parties lived within ten miles of London, then witnesses were required to attend one of the Chancery Examiners at the Rolls Office. Parties outside this jurisdiction were examined in their local communities.[91] If the suit was referred to a Chancery Master, then a second form of evidence was utilised, which

[88] Ibid, p.17.
[89] Ibid, p.22.
[90] Ibid, p.11.
[91] For a detailed explanation of this process, see Christine Churches, ‘“The Most Unconvincing Testimony”: The Genesis and the Historical Usefulness of the Country Depositions in Chancery’, *The Seventeenth Century*, vol.11, no.2 (1996), pp.209-227.

broadly took two forms. The first involved individuals submitting a range of personal documentation — such as account books, inventories, schedules of account, paper instruments etc. — to be examined by the Master. The second involved a Master personally questioning a witness via written interrogatories, which was known as an 'examination'. These two processes were not mutually exclusive and could occur within a single case. At the completion of a suit, the parties normally reclaimed any physical or documentary evidence that had been brought before the court, known as Masters' exhibits. However, for whatever reason, it was common for parties to leave such evidence in the possession of the court, and an abundance of such documentation survives. Ultimately, the documentation found at this stage of proceeding could either have been brought to the court as evidence or could have been created by the court to inform the decision-making process.

Once both parties had submitted evidence then the case could be heard in open court. The presiding judge would render their decision, which would be recorded verbatim by a register of the court in the entry book. Any order or decree made by the judge throughout the case was also recorded in the entry book, which outlined the manner in which the case had progressed within the court.[92] This decision, which was preceded by summaries of the suit — the contents of the pleadings, depositions of witnesses and any Masters' reports — could then be formally written out and enrolled on parchment after the payment of the requisite fees. Until the decree was enrolled, it only had the force of an 'interlocutory order', meaning it could be altered upon a rehearing or sometimes upon a motion.[93] However, the vast majority of suits never made it to this laborious and expensive stage, as cases were withdrawn, compromised, or subject to an order from the Lord Chancellor after the pleadings had been

[92] Series C33 at TNA.
[93] *The Practical Register in Chancery* (London: 1714), pp.123-125.

entered.[94] Horwitz explains the common characteristics of cases before the court of Chancery: '(1) a substantial minority never proceeded beyond the plaintiff's filing of his bill; (2) a considerable majority never proceeded beyond the pleadings; and (3) depositions were taken and/or a decree issued in only a distinct minority of instances'.[95] The observation of George Norburie, a sixteenth-century clerk, whose remarks were later reprinted in an eighteenth-century collection, summarises this point: 'it is to be observed, that of ten bills brought into this court, hardly three have any colour or shadow of just complaint. The rest are found *omni fundamento carere* [lacking any basis] and to be exhibited either of malice, or out of a turbulent humour wherewith too many are possessed, or else to shelter themselves for a while from some imminent storm'.[96]

What is clear from the above summary, is that the main stages of a proceeding — the pleadings, depositions, exhibits, and decrees and orders — were all recorded in writing. However, there were other forms of documentation that could form part of a case. For example, affidavits were a written statement confirmed by oath, and were broadly concerned with matters of process, such as the issuing of subpoenas. Similarly, if a case was referred to a Master, then this would create supplementary documentation, such as reports, accounts, and papers, which could be filed in numerous places. Finally, it was possible for solicitors representing the parties to petition the court — either in writing or *viva voce* — for a specific action or request, for example to extend the deadline to submit an answer. These actions would have been recorded in the entry book, so even if they were submitted orally, or the

[94] Estimates range between 75-85% of cases that never made it beyond the pleadings stage of proceeding, but definitive statistics are difficult to ascertain; see Horwitz, *A Guide to Chancery Equity Records*, pp.25-26; Margaret R. Hunt, 'Wives and Marital "Rights" in the Court of Exchequer in the Early Eighteenth Century' in Paul Griffiths and Mark S. R. Jenner eds., *Londinopolis: Essays in the Cultural and Social History of Early Modern London* (Manchester: Manchester University Press, 2000), pp.107-129, p.112, n.24.
[95] Horwitz, *A Guide to Chancery Equity Records*, p.26.
[96] George Norburie, 'The Abuses and Remedies of Chancery', in Francis Hargrave ed., *A Collection of Tracts Relative to the Law of England* (London: 1787), p.434.

petitions themselves have not survived, there is a written record of how the suit progressed. Ultimately, while it is not as straightforward as suggesting that every single action or manoeuvre that took place in Chancery was recorded in writing, the principle and fundamental stages of proceeding were recorded in written form, which forms the basis of the chapter structure and is explained in the final section of the introduction below.

When we look at the costs of suing in Chancery, the advice book *The Country-Man's Counsellor*: *or, Everyman Made his Own Lawyer* — printed anonymously in 1682 and sold for tuppence — stated that the total cost of an injunction to stop proceedings at common law was £1 1s. 1d.[97] Amy Erickson has suggested that this was 'not especially high … but initial costs multiplied quickly with commissions to take evidence in the country, complications in pleadings, extended by delays and bribes'.[98] Indeed, *The Country-Man's Counsellor* shows that it cost an extra 1s. to swear an affidavit, an extra 9d. for 'all copies of Bills, & answers, every sheet conteyning 15 lines', and a further 8d. to file these documents.[99] The court would not hear cases worth less than £10 in value — or for land worth less than 40s. per annum — and according to the barrister Joshua Fitzsimmonds, the common cost of continuing a case to a hearing in 1751 was at least £20.[100] However, complaints about the excessive costs in Chancery, and especially in following a case to completion, were commonplace throughout this period. To use but one example, compare Fitzsimmond's assessment to an anonymous tract from the same period, which suggested that suing for anything less than £500 was counterproductive.[101] As such, it is extremely difficult to assess the cost involved in pursuing

[97] H. R., *The Country-Mans Counsellour, Or, Every Man Made His Own Lawyer* (London: 1682), p.7.
[98] Amy Erickson, *Women and Property in Early Modern England* (London: Routledge, 1993), p.117.
[99] H. R., *The Country-Mans Counsellour*, p.7.
[100] Horwitz, *A Guide to Chancery Equity Records*, p.30; Joshua Fitzsimmonds, *Free and Candid Disquisitions, On the Nature and Execution of the Laws of England, Both in Civil and Criminal Affairs* (London: 1751), p.20.
[101] *Animadversions Upon the Present Laws of England* (London: 1750), p.8; for detailed costs see Samuel Turner, *Costs and Present Practice of the Court of Chancery* (London: 1795).

a case in Chancery, especially as parties would have to pay their private solicitors and legal experts to advise and undertake a range of tasks.

Entering the late seventeenth century, Chancery saw a dramatic decline in its level of business, which is comparable to the analysis undertaken by Christopher Brooks concerning the levels of litigation in the central courts of Westminster, and discussed in detail in the third section below.[102] However, when Henry Horwitz and Patrick Polden have compared this data to 'active cases' in the court, they have concluded that there is 'a much sharper proportionate fall in new suits than in overall business in the middle and later decades of the eighteenth century'.[103] This meant that the speed with which Chancery dealt with cases dramatically declined over the course of the eighteenth century. To use one example from their data set, in 1685 less than three per cent of all cases took over five years to conclude, which had risen to ten per cent a century later.[104] This has led the authors to conclude that in terms of the duration of suits, 'there can be no doubt that the court of Chancery's performance degenerated seriously between the later seventeenth century and the later eighteenth and early nineteenth century'.[105] One anonymous tract, aptly named *Observations on the Dilatory and Expensive Proceedings in the Court of Chancery* and published in 1701, listed twenty problems of the court which resulted in unnecessary expense and delays. These ranged from general issues, such as the reliance on officers who charged fees, to the delay in a plaintiff getting a sufficient answer, which could last two to three years. As the author concluded, it is 'observable, that few Rules for abridging the Proceedings, and consequently the Fees, ever

[102] Christopher W. Brooks, 'Interpersonal Conflict and Social Tension: Civil Litigation in England, 1640-1870', in A. L. Beier, David Cannadine and James Rosenheim eds., *The First Modern Society: Essays in English History in Honour of Lawrence Stone* (Cambridge: Cambridge University Press, 1989), pp.357-99; Christopher W. Brooks, *Pettyfoggers and Vipers of the Commonwealth: The 'Lower Branch' of the Legal Profession in Early Modern England* (Cambridge: Cambridge University Press, 1986), pp.54-55.
[103] Henry Horwitz and Patrick Polden, 'Continuity or Change in the Court of Chancery in the Seventeenth and Eighteenth Centuries?', *Journal of British Studies*, vol.35, no.1 (1996), pp.24-57, p.30.
[104] Ibid, p.32.
[105] Ibid, p.53.

meet with compliance'.[106] The Lord Chancellor held very little authority over the conduct of his staff, who were permitted to undertake their duties as they saw fit. This ultimately led to consistent and ongoing complaints of expense, delay, inefficiency, and even fraud throughout this period. Indeed, Horwitz suggests that the way in which the court and its officials handled the cases that came before them, 'was a mixture of genuine idealism and bureaucratic self-interest, compounded by overwork and complicated by the manoeuvres of the opposing parties for whom delay and obfuscation might well be advantageous'.[107] Ultimately, Horwitz has suggested that entering the seventeenth century, Chancery was an institution which was 'greatly affected by two concerns which pulled it in different directions'. The first was the commitment of the Lord Chancellor to understand the fundamental complaints brought before the court in order to render appropriate relief, while the other was the pressure to deal with the rising number of cases initiated in Chancery. Such a surge in business tended to prolong suits, especially as the court was short of judges.[108]

Chancery as a Court of Equity

Having established the procedure of the court, this section outlines the historical development of Chancery's equitable jurisdiction. Under the stewardship of Lord Chancellor Nottingham — 1673-1682 — both the formal structure of the court and the jurisdiction of bankruptcy underwent a dramatic re-evaluation, which provides a chronological starting point for the study of bankruptcy in the court of Chancery. The court of Chancery's equitable jurisdiction was not an intentional creation, and the procedures associated with its jurisdiction evolved in an uncoordinated way. From around the fourteenth century, equity became institutionally separated from the common law, and by the late fifteenth century, Chancery came to be recognised as a court with its own unique identity, as the Lord Chancellor made decrees in

[106] *Observations on the Dilatory and Expensive Proceedings in the Court of Chancery* (London: 1701), p.6.
[107] Horwitz, *A Guide to Chancery Equity Records*, pp.9-10.
[108] Ibid, p.9.

his own name.[109] Holdsworth has stated that this new and independent development arose from three factors: hostility to the rigidity of the common law, ideas about the way in which equitable rules should be governed by conscience, and a distinct procedure that allowed each individual case to be determined in the correct, equitable manner.[110] By the sixteenth century, these three factors led to three types of suit being heard within Chancery: (1) where the common law held no jurisdiction, (2) where there was a jurisdiction but 'owing to the disturbed state of the country, or to the power of the defendant', the courts could not act, (3) where there was a jurisdiction but the law itself was at fault.[111] F. W. Maitland has suggested that prior to the abolition of courts of equity in 1875, equity itself could be defined as a 'body of rules' which were 'administered only by those Courts which are known as Courts of Equity'.[112] Equity was seen as synonymous with the jurisdiction of these courts, and several other early modern courts held an equitable jurisdiction. The court of Exchequer developed an equity side to proceedings in the sixteenth century, but the volume of its business was far outstripped by that of Chancery, leading Horwitz to refer to Exchequer as Chancery's 'younger sister'.[113] Initially, the court of Requests, and the Councils in the North and Wales held equitable jurisdictions, but both were abandoned during the Civil War, while the three independent palatinate counties of Chester, Durham, and Lancaster saw the volume of their equitable business decline rapidly over the seventeenth century.[114]

This meant that the court of Chancery was the primary court of equity throughout the seventeenth and eighteenth centuries, so much so, that the *Oxford Dictionary of Law*, defines

[109] Jones, *The Elizabethan Court of Chancery*, pp.9-10.
[110] Holdsworth, *A History of English Law*, vol.2, pp.346-347; see Timothy S. Haskett, 'The Medieval English Court of Chancery', *Law and History Review*, vol.14, no.2 (1996), pp. 245-313.
[111] Ibid, vol.1, p.405.
[112] F. W. Maitland, *Equity, Also the Forms of Action at Common Law: Two Course of Lectures* (Cambridge: Cambridge University Press, 1929), p.1.
[113] Henry Horwitz, 'Chancery's "Younger Sister": The Court of Exchequer and its Equity Jurisdiction, 1649-1841', *Historical Research*, vol.72, no.178 (1999), pp.160-82.
[114] Erickson, *Women and Property in Early Modern England*, p.31.

equity as 'That part of English law originally administered by the Lord Chancellor and later by the Court of Chancery, as distinct from that administered by the courts of common law'.[115] Dennis Klinck has suggested that early modern Chancery was a 'court of conscience', as the Lord Chancellor was the keeper of the sovereign's conscience and certain acts were prohibited because they were 'against conscience'.[116] Willard Barbour states that conscience was a 'juristic principle' within fifteenth-century Chancery, while A. W. B. Simpson elaborates that conscience was the 'primary principle of decision' throughout the fifteenth and sixteenth centuries.[117] Finally, C. K. Allen notes that the one general principle which more than any other influenced equity as it was developed by Chancery, was 'a philosophical and theological conception of conscience', demonstrating that an understanding that conscience played a central role in the development of equity is now commonplace.[118]

To modern readers, it may seem self-evident that conscience seems a private, subjective notion, while the law is, and ought to be, an objective judgement and not a matter to be decided by personal morality. This seeming contradiction was not lost on early modern legal commentators, as throughout its development, equity was based upon moral, rather than legal or juristic grounds, and was therefore liable to individual interpretation.[119] Indeed, any scholar of the common law is familiar with the English jurist John Selden's oft-quoted critique, that the dimensions of the Chancellor's conscience — and therefore legal justice —

[115] Jonathan Law and Elizabeth A. Martin eds., *Oxford Dictionary of Law* (Oxford University Press, 2014), stable URL: https://www.oxfordreference.com/view/10.1093/acref/9780199551248.001.0001/acref-9780199551248-e-1371?rskey=MGak07&result=1441 accessed 22/2/2010.
[116] Dennis Klinck, *Conscience, Equity and the Court of Chancery in Early Modern England* (Surrey: Ashgate, 2010), p.vii.
[117] Willard Barbour, 'Some Aspects of Fifteenth-Century Chancery', *Harvard Law Review*, vol.31, no.6 (1918), pp.834-859, p.838; A. W. B. Simpson, *A History of the Common Law of Contract: The Rise of the Action of Assumpsit* (Oxford: Clarendon Press, 1975), p.397.
[118] C. K. Allen, *Law in the Making*, sixth edition (Oxford: Oxford University Press, 1958), p.389; Mike Macnair, 'Equity and Conscience', *Oxford Journal of Legal Studies*, vol.27, no.4 (2007), pp.659-681; Richard Hedlund, 'The Theological Foundations of Equity's Conscience', *Oxford Journal of Law and Religion*, vol.4, no.1 (2015), pp.119-140.
[119] Yale, *Lord Chancellor Nottingham's Chancery Cases*, vol.1., p.xxxix.

might be as variable as the length of his foot.[120] An enduring challenge to equity was that the law, by its very nature, was intended to be consistent and predictable. As Francis Bacon observed, the 'Primary Dignity of Laws' is 'that they be certain'.[121] Paradoxically, it was the very notion of equity's flexible application to which its advocates clung. As one anonymous tract summarised in 1682, the nature of Chancery 'is to moderate the exact rigours of Law, and therefore is called a court of Equity'.[122] This meant that on the one hand, equity was seen as offering flexibility from the strictures of the common law, while on the other, it was seen as imparting subjectivity and arbitrariness to legal decisions.[123] Ultimately, entering the late seventeenth century, conscience was identified as the central principle for the decision making process of Chancery, but was constantly attacked as being contrary to the very idea of law as comprised of determinate and knowable rules.[124] As such, it is worth analysing the ways in which Lord Chancellor Nottingham addressed these issues in his attempts to formalise and regulate the implementation of the equitable jurisdiction of Chancery.

Klinck describes Nottingham as a 'seminal figure in the history of English equity', as it was under his stewardship that equity began to be governed by certain rules and regulations.[125]

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[120] The full quote reads: 'Equity is a roguish thing. For Law we have a measure, know what to trust to; Equity is according to the conscience of him that is Chancellor, and as that is larger or narrower, so is Equity. 'Tis all one as if they should make the standard for the measure we call a "foot" a Chancellor's foot; what an uncertain measure this would be! One Chancellor has a long foot, another a short foot, a third an indifferent foot. 'Tis the same thing in the Chancellor's conscience', in Frederick Pollock ed., *The Table Talk of John Selden* (London: The Selden Society, 1927), p.43; *The Table Talk* was a compilation of Selden's private conversations transcribed by a secretary and was initially published in 1689, some 45 years after his death; see also Dennis Klinck and Loris Mirella, 'Tracing the Imprint of the Chancellor's Foot in Contemporary Canadian Judicial Discourse', *Canadian Journal of Law and Society*, vol.13, no.2 (1998), pp.63-98.

[121] Francis Bacon, 'Example of a Treatise on Universal Justice or the Foundations of Equity, by Aphorisms' appended to Book 8 of *De Augmentis*, in J. Spedding, R. L. Ellis and D. D. Heath, eds., *The Works of Francis Bacon* (New York: Garrett, 1968), vol.5, p.88.

[122] H. R., *The Country-Mans Counsellour*, p.5.

[123] Dennis Klinck, 'Imagining Equity in Early Modern England', *Canadian Bar Review*, vol.84, no.2 (2005), pp.217-247.

[124] Klinck, *Conscience, Equity and the Court of Chancery in Early Modern England*, p.3; see also J. C. Campbell, 'The Development of Principles in Equity in the Seventeenth Century', in Peter R. Anstey ed., *The Idea of Principles in Early Modern Thought: Interdisciplinary Perspectives* (London: Routledge, 2017), pp.45-76.

[125] Dennis Klinck, 'Lord Nottingham and the Conscience of Equity', *Journal of the History of Ideas*, vol.67, no.1 (2006), pp.123-147, p.123.

Holdsworth states that Nottingham's success as Lord Chancellor was 'due partly to his own industry and genius, partly to the fact that the time was ripe for the beginning of such a settlement'.[126] At this point, the future administration of equity was at a critical juncture; either the court would be ruled by an increased fixity in its doctrine, or it would retain an emphasis on the moral, and therefore relatively unstable instinct, in judicial decisions.[127] Holdsworth concludes that in this manner 'the man and the opportunity happily coincided; and so, whether we look at his influence upon the principles of equity, or upon the character of equity itself, we must admit that he deserves his traditional title of the Father of Modern Equity'.[128] D. E. C. Yale elaborates by stating that the whole tendency of Lord Nottingham's work, was towards a 'scientific arrangement of equity', noting he was the 'father of systematic equity'.[129] While equitable principles of justice did become increasingly formalised under the stewardship of Nottingham, there is a danger in over-stating its 'modern' processes of decision making. Even as late as 1759, there was concern that equity might endanger itself by excessive rigidity, as Lord Hardwicke stated, 'Fraud is infinite, and were a court of Equity once to lay down rules, how far they would go, and no farther, in extending their relief against it, or to define strictly the species of evidence of it, the jurisdiction would be cramped, and perpetually eluded by new schemes, which the fertility of man's invention would contrive'.[130] As Klinck concludes, beneath the rhetoric of fixed rules, 'there remain what might be considered significant elements of fluidity'.[131] Ultimately, while Nottingham attempted to make Chancery more 'law-like' through the regularisation of equity, he did not abandon conscience as the reference point of decision making. In this

[126] Holdsworth, *A History of English Law*, vol.6, p.548.
[127] Yale, *Lord Chancellor Nottingham's Chancery Cases*, vol.2, p.7.
[128] Holdsworth, *A History of English Law*, vol.6, p.548.
[129] Yale, *Lord Chancellor Nottingham's Chancery Cases*, vol.1., p.xlv.
[130] Joseph Parkes, *A History of the Court of Chancery* (London: Longman, Rees, Orme, Brown, and Green, 1828), p.508.
[131] Dennis Klinck, 'Lord Nottingham's "Certain Measures"', *Law and History Review*, vol.28, no.3 (2010), pp.711-748, p.714.

manner, while Chancery was coming to rely upon established principles and rules, it still allowed a flexibility in administering justice according to the particular circumstances of the case. These seemingly contradictory ideals are perhaps best illustrated through a brief discussion of the practical implementation of judicial precedent.

William Jones claimed that by the death of Elizabeth I, Chancery had embraced precedent and formulated 'as rigid a set of rules as any court of common law'. For Jones, both Chancery and the common law courts followed previous legal decisions and administered 'a stable and certain law — insofar as any law can be certain — which was beyond those other courts lacking, as they did, either a "code" or binding precedents'.[132] Acknowledging that doctrines of conscience could not easily exist alongside recorded decisions and precedents, Jones states that the result was 'confusion', until it was decided that judgement on the latter was to be the 'theory as well as the practice'.[133] In a similar manner, J. H. Baker observes that as a result of regular reporting of Chancery cases after 1660, the reduction of equity to a system of principles was already 'completed', suggesting that the process was nearly finalised prior to the Chancellorship of Nottingham.[134] However, these accounts are too simplistic in their analysis of judicial precedent within Chancery. While Klinck has suggested that Lord Ellesmere — Lord Keeper and Chancellor 1596-1617 — and Sir Thomas Coventry — Lord Keeper 1625-1640 — demonstrated 'growing deference to precedent as a way of imparting consistency to equity', he falls short of suggesting they were bound by previous decisions.[135] Certainly, by the later eighteenth century, Chancery had come to rely more heavily on precedent-based law. Michael Lobban states that by the 1770s, 'equity itself had

[132] W. J. Jones, 'Conflict or Collaboration? Chancery Attitudes in the Reign of Elizabeth I', *The American Journal of Legal History*, vol.5, no.1 (1961), pp.12-54, p.12.
[133] Ibid, p.52.
[134] J. H. Baker, *An Introduction to English Legal History*, fifth edition (Oxford: Oxford University Press, 2019), p.110.
[135] Klinck, 'Lord Nottingham's "Certain Measures"', pp.711-748.

largely hardened into a precedent-based system', although he does not seek to provide an overview of exactly when this process took place.[136] Yet, throughout the period analysed in this thesis, the use of precedent remained uncertain. Indeed, Lord Hardwicke — Lord Chancellor 1737-1756 — was still only able to give an ambiguous answer to whether equity was governed by set rules: 'Some general rules there ought to be, for otherwise the great inconvenience of *Jus vagum et incertum* [right vague and uncertain] will follow; and yet the Praetor [Chancellor] must not be so absolutely and invariably bound by them, as the judges are by the rules of the common law'.[137] As such, a more nuanced understanding of judicial precedent as it appears in Chancery is required.

In contrast to Jones and Baker, Yale states that prior to Nottingham, 'there is very little to be gathered from the sources about the authority to be accorded to decided cases in equity. It is certain that no notion of precedent as it is commonly understood to-day then existed'. However, Yale concedes, 'it is equally certain that no court can fail in the course of time to build up some tradition of consistency'.[138] As the leading eighteenth-century jurist William Blackstone commented, decrees in equity were awarded as the circumstance arose, 'founded on no settled principles, as never being designed, and therefore never used, for precedents'.[139] Indeed, there was a strong notion throughout the period that a precedent needed time to mature before it could be considered of any great value.[140] A clear example of this can be seen in 1685, when Lord Keeper North decreed that as the case cited in a legal argument had only been decided last term, it was 'not to be urged as a precedent'. A decision would need

[136] Michael Lobban, *The Common Law and English Jurisprudence, 1760–1850* (Oxford: Oxford University Press, 1991), p.1.
[137] Letter to Lord Kames, in Philip C. Yorke, *The Life and Correspondence of Philip York, Earl of Hardwicke, Lord High Chancellor of Great Britain* (New York: Octagon, 1977, originally 1913), vol.2, p.554.
[138] Yale, ed., *Lord Chancellor Nottingham's Chancery Cases*, vol.1, p.xxxvii.
[139] William Blackstone, *Commentaries on the Laws of England*, 4 vols. (London: John Murray, Albemarle Street, 1857), vol.3, p.433.
[140] Yale, *Lord Chancellor Nottingham's Chancery Cases*, vol.1, pp.xliii-xliv.

testing before it could be considered sound advice for future use.[141] While precedent was used during this period to persuade the court, it was not utilised to compel the court to defer to earlier decisions. As such, precedent was beginning to become utilised in the judicial process, but it could not be said to govern that process in Chancery, as some precedents were to be avoided and some to be followed.[142] Ultimately, the court still held a wide scope for deciding the individual merits of a suit, as it was not yet bound by modern concepts of equitable precedent. As explained above, the court sought to gather as much background information as possible in order to provide a verdict that related to the specific details of the case.

In a similar manner to the development of equity as a legal principle, the Chancellor's jurisdiction over bankruptcy developed in an uncoordinated way. The 1571 act implicitly introduced the original jurisdiction, as debtors had to petition the Lord Chancellor to execute a commission of bankruptcy.[143] Technically speaking, several Chancellors oversaw multiple commissions of bankruptcy to ensure that commissioners did not abuse their power, but none reviewed their decisions until Nottingham. Put simply, this means there was no appeal to the Chancery until Nottingham. As Sir Samuel Romilly stated in the House of Commons in 1813, commissions were first intended to determine bankrupt causes without appeal, and consequently 'there was no appeal until the time of Lord Chancellor Nottingham'. Romilly went on to suggest that between the Chancellorship of Lord Nottingham and the beginning of Lord Hardwicke's tenure in 1737, there were only twenty reported cases of appeals.[144] It was not until the statute of 5 Geo 2 (1731) that the Chancellor was granted direct control over bankruptcy proceedings. Yet, this can simply be seen as a means of the law catching up with

[141] 'Pawlett v Pawlett' (1685), taken from Yale, *Lord Chancellor Nottingham's Chancery Cases*, vol.1, p.xliv.
[142] Ibid, vol.1, pp.xlv-liii.
[143] 13 Elizabeth I c.7 (1571).
[144] Sir Samuel Romilly, quoted in Yale, *Lord Chancellor Nottingham's Chancery Cases*, vol.1, p.cxv.

the reality of the situation in Chancery, as Nottingham had effectively established this direct control himself.[145]

In 1815, Henry Maddock succinctly outlined the Chancellor's jurisdiction in bankruptcy, which was

> of the utmost importance, and was subject to no Appeal. It was in the first instance *ministerial*, and so far original. It was secondarily, *appellate*; but the original and appellate Jurisdiction were frequently blended in exercise. The issuing of Commissions of Bankruptcy, and all the questions arising upon the Issue, were matters of original Jurisdiction.[146]

From its statutory creation during the sixteenth century, the Lord Chancellor assigned commissioners allowing the Chancellor to execute the bankruptcy laws via a commission of bankruptcy.[147] Throughout this period, commissions were appointed on a case-by-case basis to examine the specificities of that particular failure, demonstrating an individuality about bankruptcy proceedings.[148] As Maddock continues, commissioners were entrusted with investigating all issues pertaining to bankruptcy, and as such, 'the whole business of a Bankruptcy might have been transacted without further application to the Chancellor'. This meant that if the process went smoothly, then the only further application to the Chancellor would have been to grant a certificate of conformity to the bankrupt to receive his discharge. However, as Maddock further outlines:

> all the proceedings of the Commissioners were liable to revision by the Chancellor, and so far his Jurisdiction in Bankruptcy was appellate. His control was also continual over the Commission itself, and over the conduct

[145] 5 Geo 2 c.30 (1731); Yale, *Lord Chancellor Nottingham's Chancery Cases*, vol.1, p.cxiv.
[146] Henry Maddock, *A Treatise on the Principles and Practice of the Court of Chancery*, third edition (London: 1837), vol.2, pp.785-786.
[147] Ibid, vol.2, pp.785-786.
[148] See Jérôme Sgard, 'Bankruptcy, Fresh Start and Debt Renegotiation in England and France (17th to 18th Century)', in Thomas Max Safley ed., *The History of Bankruptcy: Economic, Social and Cultural Implications in Early Modern England* (London: Routledge, 2013), pp.223-235.

> of the Commissioners in its execution, as well as over their judicial Decisions. In all cases his Jurisdiction was exercised summarily.[149]

However, when discussing the development of this specific jurisdiction, Maddock could not specify how or when the Chancellor's authority came into being:

> It is a matter now only of curious inquiry, in what manner the Chancellor acquired what was termed his *appellate* Jurisdiction in Bankruptcy. No Statute directly confers it. An able Writer considers the Authority exercised by him, under this appellate Jurisdiction, as *recommendatory* only, and not binding on the Commissioners, but that the Chancellor by means of his power of displacing Commissioners was thus enabled to enforce his recommendations.[150]

As William Jones has stated, by the middle of the seventeenth century, it came to be understood that the Lord Chancellor 'could not refuse a petition for issue of a commission'.[151] This was further clarified in 1677, as Nottingham declared that a Chancellor could not deny the granting of a commission of bankruptcy, but he could enact the power to 'supersede' a commission 'if they proceed indiscreetly'. In this instance a new commission of 'wiser men' could handle the remaining business.[152]

This meant that during the Chancellorship of Nottingham, the court of Chancery could not only oversee the commission, but for the first time, was in a position to hear appeals from parties in the process and overrule the assigned commissioners. This development in jurisdiction has significant ramifications for a study of bankruptcy in the court of Chancery. Firstly, all of the cases in my sample have either been initiated while a commission of bankruptcy was ongoing or have been executed after at least one individual had been declared

[149] Maddock, *A Treatise on the Principles and Practice of the Court of Chancery*, vol.2, pp.785-786.
[150] Ibid, pp.785-786; the 'able writer' to which Maddock refers is Edward Christian, *The Origin, Progress, and Present Practice of the Bankrupt Law, Both in England and Ireland* (London: W. Clarke and Sons, 1818).
[151] Jones, 'The Foundations of English Bankruptcy', p.10.
[152] Heneage Finch, Earl of Nottingham, *Manual of Chancery Practice*, and *Prolegomena of Chancery and Equity*, edited by D. E. C. Yale (Cambridge: Cambridge University Press, 1965), pp.161-165.

a bankrupt by the commission. Secondly, Holdsworth has stated that prior to the Chancellorship of Nottingham, if commissioners encountered any 'legal difficulties', they usually applied to the common law courts, while Yale has suggested that when commissioners were in doubt upon a decision, they 'seem to have consulted the judges extra-judicially'.[153] Obviously, this informal approach would have left no available record to the modern historian. Indeed, Holdsworth believed that no instance of a bankruptcy application to the Chancellor existed until 1676, whereby applications began to become more frequent.[154] While subsequent cataloguing of the records has shown that bankruptcy suits can be dated to 1674, there seems to be few, if any, applications to the Lord Chancellor before this period. Indeed, to clarify the frequencies of bankruptcy during this period, Jones has estimated that the annual number of bankruptcies between 1642-1649 stood at twenty five per year, rising to only thirty one in 1653 and forty one in 1654.[155] The establishment of Chancery as an appellate court for bankruptcy, coupled with the formalisation of equity as a juristic principle under Lord Nottingham, has provided a chronological starting point for an investigation of bankruptcy proceedings within the court of Chancery. In regard to the end point, the date chosen is somewhat arbitrary, but has also been selected due to specific filing issues which occur after 1758. Similarly, as Hoppit has shown, the rate of eighteenth-century bankruptcies begins to dramatically increase during the second half of the century.[156] While both of these issues are explained in greater detail in chapter one, 1750 was chosen to establish a suitable number of cases to analyse the manner in which bankruptcy was litigated in Chancery during this period.

[153] Holdsworth, *A History of English Law*, vol.1, p.470; Yale, *Lord Chancellor Nottingham's Chancery Cases*, vol.1, p.cxv.
[154] Holdsworth, *A History of English Law*, vol.1, p.470.
[155] Jones, 'The Foundations of English Bankruptcy', p.5.
[156] Hoppit, *Risk and Failure in English Business,* p.46.

The Historiography of Chancery and Bankruptcy

This section reviews the historiography of bankruptcy and the court of Chancery. While a number of scholars have been utilised in the above two sections to highlight the operation of bankruptcy and the development of the equitable jurisdiction of Chancery, this section pays closer attention to the scholarship surrounding these two topics. To begin with, there have been few substantial works on the early modern court of Chancery since the turn of the twentieth century.[157] This is, in large part, due to the difficulty in identifying and utilising the source material. As the records were filed according to the stage of the proceeding, and subsequent cataloguing of these documents has been completed to contrasting standards across various series, the process of locating successive documents relating to a single case can be inordinately time consuming. As such, scholars have been hesitant to mine the court as their sole source base for economic, legal, and social research. Writing in 1996, Horwitz and Polden stated that the study of civil litigation in Chancery is, 'in its infancy due in part to the Court's mass of ill-indexed and complexly organized records'.[158] Two years later, Horwitz wrote an essential guide outlining these difficulties in detail.[159] More recently, Sean Bottomley has continued to suggest that 'a coherent overview' of the subject of civil

[157] Notable works include Holdsworth, *A History of English Law*; Jones, *The Elizabethan Court of Chancery*; Horwitz and Polden, 'Continuity or Change in the Court of Chancery', pp.24-57; Horwitz, 'Record-Keepers in the Court of Chancery', pp.34-51; Klinck, *Conscience, Equity and the Court of Chancery in Early Modern England;* Baker ed., *The Oxford History of the Laws of England*, vols.11-12; W. L. Carne, 'A Sketch of the History of the High Court of Chancery From the Chancellorship of Wolsey to that of Lord Nottingham', *The Virginia Law Register*, vol.13, no.7 (1927), pp.391-421; Maria L. Cioni, *Women and the Law in Elizabethan England With Particular Reference to the Court of Chancery*, PhD Thesis (London: Garland Publishing, 1985, Originally 1974).
[158] Horwitz and Polden, 'Continuity or Change in the Court of Chancery', p.27.
[159] Horwitz, *A Guide to Chancery Equity Records*; see also Henry Horwitz, *Exchequer Equity Records and Proceedings, 1649-1841* (Kew, Surrey: Public Record Office Handbook No.32, 2001); Horwitz, 'Record-Keepers in the Court of Chancery', pp.34-51; Horwitz and Polden, 'Continuity or Change in the Court of Chancery', pp.24-57.

litigation in Chancery 'is missing', demonstrating that the records of the court remain a dramatically underused source for a range of early modern scholarship.[160]

In the past twenty years, scholars have tended to dip into Chancery records and discuss a specific topic, without paying close attention to the process, procedures, and individuals involved in creating and using the documents which have survived. Perhaps the most obvious example of such an approach can be seen in the work of Andy Wood, who across several publications, draws from a range of legal sources, and multiple jurisdictions, to comment on specific aspects of social history. In an article discussing the 'mechanics of social subordination' and plebeian solidarity in an early modern Yorkshire village, Wood draws the majority of his archival sources from the court of Star Chamber, explaining that Star Chamber complaints, 'remain notorious for their highly constructed, rhetorical nature'.[161] Within a wide range of documentation — including complaints, answers, rejoinders and depositions — Wood claims that disputants 'consistently questioned the testimony of their opponents'.[162] It is here where Wood's methodological approach is apparent, as the author follows several disputes concerning a leaseholder — Sir Stephen Proctor — through the court of Star Chamber. However, Wood seamlessly quotes from these various stages of the legal process, with little or no background or context to the specific details of each stage of proceeding, or to the processes that went into creating the surviving documentation.

Wood builds on this approach in subsequent work. In 'Fear, Hatred and the Hidden Injuries of Class in Early Modern England', Wood comments on the relationship between deference and defiance within the context of class and social relations. In this article, Wood not only

[160] Sean Bottomley, 'Patent Cases in the Court of Chancery, 1714-58', *The Journal of Legal History*, vol.35, no.1 (2014), pp.27-43, p.34.
[161] Ibid, p.49.
[162] Ibid, p.49.

quotes from different stages of the legal process, but also references a wide range of courts. This includes drawing on the central courts of Westminster — such as the court of Exchequer, Chancery, and Star Chamber — as well as the court of the Duchy of Lancaster.[163] Ultimately, this approach is compounding and complicating the problem, as Wood fails to pay attention to the variations in process and procedure between jurisdictions, as well as the differences between the types of documents found at each stage of proceeding. This can be clearly illustrated from a single example. When discussing attempts to defend common rights and oppose enclosure in legal sources, Wood utilises three quotes all discussing the village of Malmesbury — in modern day Wiltshire — in 1609, within a single endnote:

> Here, the 'poor inhabitants' were set against opponents who were variously described as 'some of the wealthier sorte'; 'men of great estate' and as 'some persons that have bene of the Richar Sort'. These powerful individuals had enclosed Malmesbury's common 'to theire owne private use and have denied the resydue of the Inhabitants householders theire common'. Again, therefore, we see the identification of the enemies of plebeian community.[164]

While Wood does explain that this example has been 'culled from complaints addressed to Westminster equity courts', which were, 'usually somewhat exaggerated and rhetorical', a closer analysis of the endnote shows that these quotes have been taken from Star Chamber bills, Chancery decree rolls, and finally, Star Chamber proceedings.[165] Throughout his publications, Wood fails to provide context and background to either the jurisdiction under discussion, or the processes and procedures that went into creating the documents which have survived. If Wood wishes to argue — and it is unclear from reading the works if this is the case — that there are striking similarities between the types of documents utilised in his

[163] Andy Wood, 'Fear, Hatred and the Hidden Injuries of Class in Early Modern England', *Journal of Social History*, vol.39, no.3 (2006), pp.803-826; a similar methodological approach is taken in Andy Wood, '"Some Banglyng About the Customes": Popular Memory and the Experience of Defeat in a Sussex Village, 1549-1640', *Rural History*, vol.25, no.1 (2014), pp.1-14.
[164] Ibid, p.811.
[165] Ibid, p.811, n.37.

research, then this needs to be made explicit by paying close attention to the court under discussion.[166] While Wood's approach is perhaps the most obvious example of such a problematic methodology, other scholars fail to pay close attention to the specific details surrounding the court which produced the documentation that survives.[167] As such, this thesis sets out to highlight the difficulties with such an approach, and promulgates a more compelling methodology to utilising legal records.

Another approach scholars take when utilising Chancery records is to supplement this material with other — usually local — sources in order to gain a greater understanding of the background details of the individuals involved in suits. Christine Churches, for example, has undertaken a case study of several legal disputes involving two merchants — Thomas and Walter Lutwidge — during the first half of the eighteenth century. Having consulted a range of supplementary evidence — including private correspondence and business papers — Churches successfully shows how these cases were initiated with the intent to delay the proceedings, and 'weaken the opponent through legal costs or loss of reputation and credit or simply to evade temporarily (or even permanently) the terms of an agreement, the payment of wages or customs duties, and the repayment of debts'.[168] As Chancery could grant an injunction to stop proceedings at common law, Churches claims that these bills were initiated out of 'prevarication or spite … with the sole purpose of staving off execution of judgement already given against them at common law'.[169] Similarly, Amanda Capern has utilised supplementary material alongside the full range of Chancery records, in order to discuss the

[166] See Andy Wood, *The 1549 Rebellions and the Making of Early Modern England* (Cambridge: Cambridge University Press, 2007).
[167] See Nicola Whyte, 'Landscape, Memory and Custom: Parish Identities c.1550-1700', *Social History*, vol.32, no.2 (May, 2007), pp.166-186.
[168] Christine Churches, 'Business at Law: Retrieving Commercial Disputes From Eighteenth-Century Chancery', *The Historical Journal*, vol.43, no.4 (2000), pp.937-954, p.952.
p.939.
[169] Ibid, p.940.

capacity of rumour to be transformed into legal evidence. Explaining that physical evidence — such as covenants, titles, loans, and mortgages — were presented to the court alongside the pleadings and depositions, Capern states that it was 'memory and the surviving concrete evidence together [that] established a case'.[170] Using the example of the Danby family from North Yorkshire, Capern concludes that the 'surviving Chancery records and private family papers allow the trail of vicious stories to be followed from the Danby family to neighbours, to court, and back again'. In this manner, Capern is able to follow the discussion of rumour and hearsay both within and outside the court, in what she labels '*Fama*-in-transit'.[171]

Indeed, this is a common approach employed by scholars working on a range of early modern courts. In a recent article, Steve Hindle undertakes a close analysis of several Star Chamber suits involving the Jacobean magistrate, Sir John Newdigate. By cross-referencing these cases with 'sources generated in the local environment of parishes and manors', Hindle is able to illuminate 'the complex relationship between the actual experience and the public representation of magistracy in early seventeenth century England'.[172] As Tim Stretton has argued, 'Each record, each archive, and each scholarly purpose requires a specific approach, depending in particular on the availability of corroborative material relating to the case within and outside legal archives'.[173] For Stretton, the survival rates of certain documents, coupled

[170] Amanda Capern, 'Rumour and Reputation in the Early Modern English Family', in Claire Walker and Heather Kerr eds., *'Fama' and Her Sisters: Gossip and Rumour in Early Modern Europe* (Turnhour: Belgium, Brepols, 2015), pp.85-114, p.96.
[171] Ibid., p.103
[172] Steve Hindle, 'Self-Image and Public Image in the Career of a Jacobean Magistrate: Sir John Newdigate in the Court of Star Chamber', in Michael J. Braddick and Phil Withington eds., *Popular Culture and Political Agency in Early Modern England and Ireland: Essays in Honour of John Walte*r (Woodbridge: The Boydell Press, 2017), pp.123-144, pp.124-125; for further research relating to Sir John Newdigate, see Steve Hindle, 'Below Stairs at Arbury Hall: Sir Richard Newdigate and his Household Staff, c.1670–1710', *Historical Research*, vol.85, no.277 (2012), pp.71-88; Steve Hindle, 'Sir Richard Newdigate and the "Great Survey" of Chilvers Coton: Fiscal Seigneurialism in Late-Seventeenth-Century Warwickshire', in Christopher Dyer and Catherine Richardson eds., *William Dugdale, Historian, 1605-1686: His life, His Writings and His County* (Woodbridge: Boydell Press, 2009), pp.164-86.
[173] Tim Stretton, 'Women, Legal Records, and the Problem of the Lawyer's Hand', *Journal of British Studies*, vol.58, no.4 (2019), pp.684-700, p.694.

with the constraints of legal formalism, mean that corroborative material becomes essential in order to reconstruct the background details to a suit.[174] What is clear in these examples, is that these scholars have been able to recreate the wider plot, story, or script of a dispute and place it within the context of actions and words that were occurring in the wider community. The methodological approach employed in this thesis does not allow for the inclusion of additional material, such as private family or business papers, petitions to parliament, and proceedings from other courts. As such, there are limitations placed on the ability to reconstruct such narratives occurring within the community and understand the wider social conflict to which a case referred. However, the methodology employed throughout does enable a greater understanding of the procedural elements of the court, and how the narrative in cases altered according to the particular stage of proceeding.

In turning to bankruptcy, while it maintains economic relevance in contemporary society, and certain institutions — particularly the mass media — hold a mild fascination with the topic, its early modern past has received far less attention. Writing in 2010, Kadens has stated that 'despite the current and historical importance of bankruptcy, its pre-modern past has barely been investigated'.[175] Analysing this scholarship in greater detail, several scholars seemed to have followed this fascination into the early modern period by undertaking case studies of well-known or spectacular bankruptcies.[176] Furthermore, there are a handful of

[174] For a discussion of social effects of lawsuits over bonds and promises and the use of supplementary material, see Tim Stretton, 'Written Obligations, Litigation and Neighbourliness, 1580-1680', in Steve Hindle, Alexandra Shepard and John Walter eds., *Remaking Social History: Social Relations and Social Change in Early Modern England* (Woodbridge: Boydell Press, 2013), pp.189-210.
[175] Kadens, 'The Last Bankrupt Hanged', p.1235.
[176] See K. H. Burley, 'An Essex Clothier of the Eighteenth Century', *Economic History Review*, vol.11 no.2 (1958), pp.289-301; Michael Quilter, 'Daniel Defoe: Bankrupt and Bankruptcy Reformer', *The Journal of Legal History*, vol.25, no.1 (2004), p.53-73; Ann M. Carlos and Larry Neal, 'Women Investors in Early Capital Markets, 1720-1725', *Financial History Review*, vol.11 no.2 (2004), pp.197-224; John Paul, 'Bankruptcy and Capital Punishment in the 18th and 19th Centuries' (January 16, 2009). Available at SSRN: https://ssrn.com/abstract=1329067, accessed 28/12/2019; George Selgin, 'Those Dishonest Goldsmiths', *Financial History Review*, vol.19, no.3 (2012), pp.269-288; Nicola Phillips, *The Profligate Son: Or, a True Story of Family Conflict, Fashionable Vice, and Financial Ruin in Regency England* (Oxford: Oxford University Press, 2013).

interdisciplinary edited collections, which provide detailed chapters on a sole country or geographic location, before attempting to draw together conclusions from an international perspective. While providing insights into specific case studies, these publications largely attempt to explain the evolution of bankruptcy law in relation to large-scale developments, such as institutional change, the rise of capitalism, the role of the state in managing failure, and the desire to see entrepreneurial spirit returned to the wider economy.[177] However, in relation to early modern England, the seminal work on bankruptcy was conducted by Julian Hoppit in 1987. In *Risk and Failure in English Business 1700-1800,* Hoppit takes a quantitative approach to bankruptcy, examining the significance and causes of bankruptcy throughout the eighteenth century, attempting to track changes in the numbers of bankrupts between periods, regions, and occupations.[178] Hoppit utilises bankruptcy as a static tool to measure business failure over the course of the century, and as such, is not concerned with changes in the law, the practical implementation of procedure, or the day-to-day experience of economic actors.

In contrast to Hoppit, and somewhat unsurprisingly, much of the focus on bankruptcy has come from legal scholars, who have attempted to understand the evolution of bankruptcy laws and their subsequent implementation in modern societies.[179] Broadly speaking, legal

[177] Safley, *The History of Bankruptcy*; Cordes and Beerbühl, *Dealing With Economic Failure*; Karl Gratzer and Dieter Stiefel eds., *History of Insolvency and Bankruptcy From an International Perspective* (Huddinge: Södertörns Högskola, 2008); for a specific analysis of entrepreneurial spirit and bankruptcy legislation see Carlos, Kosack and Penarrieta, 'Bankruptcy Discharge and the Emergence of Debtor Rights in Eighteenth Century England', pp.475-506; for a discussion of bankruptcy in relation to colonial endeavours, see Cátia Antunes and Susana Münch Miranda, 'Going Bust: Some Reflections on Colonial Bankruptcies', *Itinerario*, vol.43, no.1 (2019), pp.47-62.

[178] Hoppit, *Risk and Failure in English Business;* see also Louis Levinthal, 'The Early History of Bankruptcy Law', *University of Pennsylvania Law Review and American Law Register*, vol.66, no.5/6 (1918), pp.223-250.

[179] See Duffy, *Bankruptcy and Insolvency in London During the Industrial Revolution*; Ian P. H. Duffy, 'English Bankrupts', *The American Journal of Legal History*, vol.24, no.4 (1980), pp. 283-305; Jay Cohen, 'The History of Imprisonment for Debt and its Relation to the Development of Discharge in Bankruptcy', *The Journal of Legal History*, vol.3, no.2 (1982), pp.153-171; Thomas E. Plank, 'The Constitutional Limits of Bankruptcy', *Tennessee Law Review*, vol.63, no.3 (1996), pp.487-584; Bruce H. Mann, *Republic of Debtors: Bankruptcy in the Age of American Independence* (Cambridge, Massachusetts: Harvard University Press, 2002); Jeffrey L. McNairn, '"The Common Sympathies of our Nature": Moral Sentiments, Emotional Economies, and Imprisonment for Debt in Upper Canada', *Social History*, vol.49, no.98 (2016), pp.49-72.

historians who approach the topic of bankruptcy do so in an attempt to outline alterations of the law and the circumstances behind the introduction of new legislation. In a lengthy article, William Jones provides a detailed summary of each bankruptcy statute from 1543 to 1706, attempting to establish the political, economic, and social circumstances which led to their creation. Ultimately, Jones views these statutes as 'mundane attempts to establish new rules within the limited field of debt', suggesting that they were 'intended to provide solutions to a selection of immediate problems'.[180] As explained above, much scholarly attention has focused on the legal creation of discharge in 1706, and certain scholars have attempted to understand how this statutory alteration impacted bankruptcy proceedings. For example, we have already seen how Kadens has suggested that fraud continued because discharge was 'too often unobtainable'. Indeed, between 1757-1759 only forty eight per cent of bankrupts received a discharge, which had only risen to roughly sixty per cent by the end of the century.[181] In contrast, Ann Carlos, Edward Kosack and Luis Castro Penarrieta argue that similar statistics — whereby over half of all bankrupts received a discharge between 1730-1750 — demonstrates the willingness of creditors to grant discharge, which encouraged future investment by returning creditor assets and entrepreneurial talent to the economy.[182]

In relation to Chancery, legal scholars often utilise the records of the court to demonstrate how a particular topic developed within the equitable jurisdiction. Several examples of this approach can be seen in publications discussing how the court dealt with copyright injunction, trusts litigation, patent law, and the interests of parents, children and property.[183]

[180] Jones, 'The Foundations of English Bankruptcy', p.7; see also Jérôme Sgard, 'Courts at Work: Bankruptcy Statutes, Majority Rule and Private Contracting in England (17th–18th Century)', *Journal of Comparative Economics*, vol.44, no.2 (2016), pp.450-460.
[181] Kadens, 'The Last Bankrupt Hanged', p.1290.
[182] Carlos, Kosack and Penarrieta, 'Bankruptcy Discharge and the Emergence of Debtor Rights', pp.475-506.
[183] H. Tomás Gómez-Arostegui, 'What History Teaches Us About Copyright Injunctions and the Inadequate-Remedy-at-Law Requirement', *Southern California Law Review*, vol.81, no.6 (2008), pp.1197-1280; Neil Jones, 'Trusts Litigation in Chancery after the Statute of Uses: The First Fifty Years', in Matthew Dyson and David Ibbetson eds., *Law and Legal Process: Substantive Law and Procedure in English Legal History*

However, few scholars have sought to combine the study of bankruptcy and Chancery in their analysis. One notable exception can be seen in the work of David Smith, who looks at a number of cases in Chancery which specifically dealt with the sole issue of bills of conformity — a remedy for insolvent debtors in courts of equity — between 1603 and James I's eventual abolition of conformity in 1624. Smith charts the growth of conformity and its eventual defeat within the context of charity and property, which 'mediated ideas of kingship with hard economic and legal realities'. Ultimately, Smith's use of Chancery records is placed within the wider context of the role of equitable jurisdictions, the limitations of the common law, and the development of an effective law of insolvency.[184] As such, Smith's concern is less with the specificities of bankruptcy procedure, and more with broad economic and legal developments relating to debt recovery in the early seventeenth century.

The scholarship outlined above provides insights into the attitudes and motivations of the legislature, as well as creditors within the debt-recovery process. It does not, however, grant us access to the complexities and specificities of the ongoing bankruptcy procedure, and the problems, issues, and obstacles that needed to be overcome in order to successfully complete this process. This thesis seeks to bridge this gap by analysing the manner in which cases involving bankruptcy were litigated in the court. This will enhance our historical understanding of the topic of bankruptcy by analysing how this initially autonomous legal procedure came to rely on Chancery to maintain and oversee the process.

(Cambridge: Cambridge University Press, 2013), pp.103-125; N. G. Jones, 'Trusts for Secrecy: The Case of John Dudley, Duke of Northumberland', *The Cambridge Law Journal*, vol.54, no.3 (1995), pp.545-551; Bottomley, 'Patent Cases in the Court of Chancery', pp.27-43; Adam Hofri-Winogradow, 'Parents, Children and Property in Late Eighteenth-Century Chancery', *Oxford Journal of Legal Studies*, vol.32, no.4 (2012), pp.741-769.

[184] David A. Smith, 'The Error of Young Cyrus: The Bill of Conformity and Jacobean Kingship, 1603–1624', *Law and History Review*, vol.28, no.2 (2010), pp.307-341.

Social Historians of the Law

This section provides a review of the way in which social historians of the law have utilised legal records. Particular attention is paid to how scholars have analysed the construction of the plot, story, or script in these documents, and the manner in which this was utilised as legal evidence in the form of a compelling narrative. In the past fifty years, the methodology employed by such historians has undergone a dramatic adjustment. Beginning in the 1970s and 1980s, scholars turned their focus towards a statistical understanding of crime and criminal proceedings.[185] As archival material became more readily available, historians focused their attention on the criminal courts — partly because of the sheer size and scale of available material in civil jurisdictions — to comment on the history of crime, law and order, and other related topics. With English records being more laconic than their European counterparts — containing fewer depositions and often simply documenting the final stages of a proceeding — the focus turned towards attempting a quantitative understanding of English law, due to the perceived limitations inhibiting a qualitative interpretation. This approach is best summarised by James Sharpe in his pioneering work *Crime in Early Modern England 1550-1750*, which was first published in 1984. Within this work, Sharpe suggests that 'the most useful' approach to the history of crime, is the 'systematic study of court archives, usually with some notion of statistical analysis in mind'.[186] Indeed, several scholars adopted this approach, making a number of early contributions to our understanding of the history of crime and punishment.[187] Sharpe goes on to outline the benefits of this approach to

[185] The early progress of the history of crime in early modern England can be found in a number of review articles, see Victor Bailey, 'Bibliographical Essay: Crime, Criminal Justice and Authority in England', *Bulletin of the Society for the Study of Labour History*, vol.40 (1980), pp.36-46; E. W. Ives, 'English Law and English Society', *History*, vol.61 (1981), pp.50-60; J. A. Sharpe, 'The History of Crime in Late Medieval and Early Modern England: A Review of the Field', *Social History*, vol.7 (1982), pp.187-203; Joanna Innes and John Styles, 'The Crime Wave: Writing on Crime and Criminal Justice in England', *Journal of British Studies*, vol.25 (1988), pp.380-435.

[186] J. A. Sharpe, *Crime in Early Modern England 1550-1750* (London: Longman, 1999), pp.13-14.

[187] The list of prominent works is too long to effectively list here, but perhaps the most notable is J. M. Beattie's study of crime and punishment in Sussex and Surrey in the late seventeenth and eighteenth centuries, J. M.

our understanding of the law, as in the short term, statistical analysis can furnish details of the 'patterns of crime', while over the long-run, it can produce evidence of the fluctuations in levels of crime. These fluctuations could then be compared to other socio-economic variables, such as trade, war, and demographic trends, to gain a greater understanding of the social aspects of crime.[188] However, while quantification of judicial records provided an insight into changes in the criminal system, it told us little about the reasons behind such changes, or about the people involved in illicit and illegal behaviour. Ultimately, only a small minority of individuals found themselves involved in criminal proceedings, and as Sharpe concludes, quantification provided 'a framework for future research, and a starting point for future debate about the history of crime'.[189]

The most influential scholar to build on such a framework was Christopher Brooks, who reset the focus of social historians of the law towards access to justice and court usage by ordinary people. As Brooks demonstrates, between 1200 and 1700, 'ordinary people were in court more often, and knew more about "law" (however defined), than they have at any time subsequently'.[190] In this manner, Brooks helped to show how the law — and especially the central courts at Westminster — became a mechanism for resolving disputes in a progressively better way.[191] One of Brooks' major contributions to our understanding of legal institutions was the previously overlooked fluctuations in the volume of litigation initiated in

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Beattie, *Crime and the Courts in England 1660-1800* (Oxford: Oxford University Press, 1986); see also, J. S. Cockburn ed., *Crime in England 1550-1800* (London: Methuen, 1977); Alan Macfarlane, *Witchcraft in Tudor and Stuart England: A Regional and Comparative Study* (London: Routledge and Kegan Paul, 1970); J. A Sharpe, *Crime in Seventeenth-Century England* (Cambridge: Cambridge University Press, 1983); Joel Samaha, *Law and Order in Historical Perspective: The Case of Elizabethan Essex* (New York: Academic Press, 1974).

[188] Sharpe, *Crime in Early Modern England 1550-1750*, pp.59-60.

[189] Ibid, pp.61-62.

[190] Christopher W. Brooks, *Lawyers, Litigation and English Society Since 1450* (London: The Hambledon Press, 1998), p.128.

[191] Christopher W. Brooks, *Law, Politics and Society in Early Modern England* (Cambridge: Cambridge University Press, 2008), Brooks, *Pettyfoggers and Vipers of the Commonwealth*; Brooks, *Lawyers, Litigation and English Society Since 1450*; see also Michael Lobban, Joanne Begiato, Adrian Green eds., *Law, Lawyers, and Litigants in Early Modern England: Essays in Memory of Christopher W. Brooks* (Cambridge: Cambridge University Press, 2019).

the central courts of Westminster, both in common law and equity. Broadly speaking, Brooks' findings can be summarised as follows: the sixteenth century saw a rapid expansion of business, before growth slowed in the seventeenth century and levelled out towards its end. However, during the late seventeenth century there began a contraction in the level of business, which subsequently became far more pronounced in the middle decades of the eighteenth century. Finally, there can be seen a limited revival during the first three decades of the nineteenth century.[192] In attempting to explain this phenomenon, Brooks suggests that it was now possible to see a society whereby 'the rule of law was replacing individual action'.[193] Ultimately, the courts were becoming more important as sources of particular remedies than as arenas for personal feuds.[194]

The overwhelming majority of cases brought before every court and jurisdiction in early modern England concerned debt recovery.[195] In attempting to understand the nature of this phenomenon, scholars began to pay closer attention to local courts. Craig Muldrew, for example, analysed the local records of King's Lynn in an attempt to discover not only who was suing whom, but just as importantly, 'who was lending to whom'.[196] For Muldrew, credit and capital came to depend on the public means of social communication and circulating judgements about the value of other members of communities: 'The stress on trust as a

[192] Brooks, 'Interpersonal Conflict and Social Tension', pp.357-99; Brooks, *Pettyfoggers and Vipers of the Commonwealth*, pp.54-55.
[193] Brooks, *Lawyers, Litigation and English Society Since 1450*, p.19.
[194] For example, there is now a consensus amongst historians that the period 1660-1800 saw a steady decrease in the homicide rate, and subsequently the execution of felons across England; see Beattie, *Crime and the Courts in England 1660-1800*, pp.107-112; Sharpe, *Crime in Early Modern England 1550-1750*, pp.86-88; Samaha, *Law and Order in Historical Perspective*, pp.125-132; Leon Radzinowicz, *A History of English Criminal Law and its Administration from 1750*, 5 vols. (London: Stevens, 1948-1990), vol.1, p.149; J. S. Cockburn, *A History of English Assizes 1558-1714* (Cambridge: Cambridge University Press, 1974), pp.94-95.
[195] To use but one example, 90 per cent of all suits brought before the King's Bench and the Court of Common Pleas between 1490-1640 concerned action for debt and property, Bruce Lenman and Geoffrey Parker, 'The State, the Community and the Criminal Law in Early Modern Europe', in V. A. C. Gatrell, Bruce Lenman and Geoffrey Parker eds., *Crime and the Law: The Social History of Crime in Western Europe Since 1500* (London: Europa Publications, 1980), pp.11-48.
[196] Craig Muldrew, 'Credit and the Courts: Debt Litigation in a Seventeenth-Century Urban Community', *The Economic History Review*, vol.6, no.1 (1993), pp.23-38, p.36.

necessary social bond meant that increasingly a good reputation for honesty and reliability in obligations was of great social importance'.[197] As the main economic unit of assessment, it became essential for households to be able to judge the trustworthiness of one another before extending credit or entering into contracts. Such bonds of trust would have acted to bind communities together, as they were based upon 'moral knowledge about others'. As such, a 'culture of credit' became understood and reinforced through social communication and circulating judgements about other members of the community, seen in the development of what Muldrew calls a sort of 'competitive piety'.[198] Muldrew's work has greatly enhanced our understanding of credit networks and the role that local jurisdictions played as an institution which aided debt recovery. However, it is worth pausing on this research — published throughout the 1990s — to analyse these findings in greater detail.[199]

Firstly, the local nature of such studies must be emphasised, as these jurisdictions differed dramatically from the main central courts in Westminster. Secondly, the suits that Muldrew utilised were simple and straightforward examples of debt recovery. As such, the combination of these two factors seem to make Muldrew's analysis rather simplistic in terms of the legal process to which debtors and creditors were entwined. For example, 85 per cent of all cases brought before the borough court of King's Lynn concerned sales credit, or credit extended for services rendered, or for work done.[200] In approaching these suits, Muldrew

[197] Craig Muldrew, *The Economy of Obligation: The Culture of Credit and Social Relations in Early Modern England* (Basingstoke, Hampshire: Palgrave, 1998), p.148.
[198] Ibid, pp.148-150.
[199] See Muldrew, 'Credit and the Courts', pp.23-38; Craig Muldrew, 'The Culture of Reconciliation: Community and the Settlement of Economic Disputes in Early Modern England', *The Historical Journal*, vol.39, no.4 (1996), pp.915-942; Craig Muldrew, 'Rural Credit, Market Areas and Legal Institutions in the Countryside in England, 1550-1700', in Christopher Brooks and Michael Lobban eds., *Communities and Courts in Britain, 1150-1900* (London: Hambledon Press, 1997), pp.155-178; for later publications see Craig Muldrew, '"Hard food for Midas": Cash and its Social Value in Early Modern England', *Past & Present*, vol.170 (2001), pp.78-120; Craig Muldrew, '"A Mutual Assent of Her Mind"?: Women, Debt, Litigation and Contract in Early Modern England', *History Workshop Journal*, vol.55, no.1 (2003), pp.47-71; Craig Muldrew, 'Class and Credit: Social Identity, Wealth and the Life Course in Early Modern England', in Henry French and Jonathan Barry eds., *Identity and Agency in England, 1500-1800* (Basingstoke: Palgrave Macmillan, 2004), pp.147-177.
[200] Muldrew, *The Economy of Obligation*, p.204.

assesses the level of social participation by analysing the socio-economic standing of plaintiffs and defendants. In concluding, Muldrew suggests that the court was a 'surprisingly egalitarian and accessible institution', giving a 'very real illustration of equality before the law; an equality which seems to have wiped out social distinctions in this significant and prevalent sphere of social action'.[201] Furthermore, when looking at a sample of all the plaintiffs' declarations from suits in court between 1652-1654, Muldrew utilises the court pleas book. This source listed both the date upon which the transaction took place, as well as the date upon which payment was demanded by the creditor, meaning that it is possible to compare both these dates to find out 'how long most credit was extended before creditors asked for payment'. As such, Muldrew concludes that the average length of time for the extension of credit was eight months and twenty five days.[202] It is clear from these examples that Muldrew has utilised relatively straightforward suits — concerning a single debt and only one lender and one borrower — to conduct a quantitative analysis of the socio-economic background of debtors and creditors, particularly in relation to social standing, occupation, and income. Indeed, in order to understand how assessments of credibility and trustworthiness were made, Muldrew relied on the 'comments' of as many historical agents as possible, which were taken largely from letters, diaries, autobiographies, and printed instruction pamphlets. Thus, while Muldrew's quantitative analysis of debt recovery comes from legal records, the qualitative study of mutual surveillance comes from outside the legal setting.[203]

Building on the work of Muldrew, Alexandra Shepard has suggested that rather than constituting the basis of credit, such bonds of trust, 'merely overlaid their more concrete

[201] Muldrew, 'Credit and the Courts', p.36.
[202] Muldrew, *The Economy of Obligation,* p.174.
[203] Ibid, pp.1-8.

foundations in the goods that both represented wealth and provided security against default'.[204] Utilising over 13,500 testimonials, Shepard explores the language of self-description, as a broad range of men and women appeared as witnesses in ecclesiastical courts, responding to the question of their worth. The monetary values provided by witnesses 'were at the heart of a *qualitative* frame of reference for the quantification of status', in what Shepard terms a 'culture of appraisal'.[205] As appearing in court was a routine activity, Shepard argues there was an expectation of plausibility in such assessments, as knowledge of each other's property was well established, known, and circulated through legal proceedings. For Shepard, such a language of self-description provides valuable insights into the processes of social estimation in which witnesses themselves held a stake.[206] Ultimately, the assessment of moveable property was essential to successful social estimation, as 'the evaluation of goods served as the foundation for interpersonal credit relations', which meant that individuals were, 'adept at judging the value of each other's goods'.[207] However, from the late seventeenth century, both the nature of responses from witnesses, as well as the frequency of inquiries relating to worth, declined dramatically. As Shepard argues, these changes were 'indicative of a gradual yet profound transition in the calculus of esteem and the operation of credit across the long seventeenth century'.[208] Indeed, between 1550-1650, physical markers of worth became limited, and 'more likely to involve the appraisal of the *flow* rather than the *stock* of goods, thereby forming a less stable foundation for the brokerage of credit'.[209] Entering the late seventeenth century, interpersonal credit was becoming

[204] Alexandra Shepard, *Accounting For Oneself: Worth, Status, and the Social Order in Early Modern England* (Oxford: Oxford University Press, 2015), p.36; see also Alexandra Shepard and Judith Spicksley, 'Worth, Age, and Social Status in Early Modern England', *Economic History Review*, vol.64, no.2 (2011), pp.493-530; Alexandra Shepard, 'The Worth of Married Women Witnesses in the English Church Courts, 1550-1730', in Cordelia Beattie and Matthew Frank Stevens eds., *Married Women and the Law in Premodern Northwest Europe* (Woodbridge: The Boydell Press, 2013), pp.191-212.
[205] Ibid, p.28.
[206] Ibid, p.31.
[207] Ibid, p.303, p.45.
[208] Ibid, p.277.
[209] Ibid, p.2.

insecure as the relationship between status and wealth became increasingly difficult to quantify.[210] Indeed, according to Margot Finn, this trend continued well in to the twentieth century.[211]

The work of these scholars has greatly enhanced our understanding of the levels and fluctuations of litigation, the way in which individuals utilised the legal system, the interconnected nature of credit networks, and the importance of trust and reputation in the early modern economy. This thesis builds upon the previous scholarship outlined above, but does not fit easily within, or alongside it. For example, Muldrew presents debt recovery in too simplistic a manner, largely relying on the quantitative aspects of legal records. Shepard's work has emphasised the qualitative side of legal sources, paying closer attention to the individuals involved in the legal process. But perhaps more importantly, Shepard clearly demonstrates that entering the late seventeenth century the assessment of worth based upon reputation, and even goods, was unstable and becoming difficult to judge. The insecurity and inability to effectively judge individuals is an important point to highlight, as Chancery suits involving bankruptcy were extremely complex, often involving multiple creditors, debtors, and claims on a single — or even multiple — estates. The levels of debt involved far outstripped anything that could be litigated in a local jurisdiction. Finally, a statistical understanding of outcome — as seen in homicide rates, conviction rates, levels of crime etc. — is again unhelpful. While there was obviously a spectrum of success and failure throughout Chancery, the concept of a 'winning' or 'losing' party cannot be clarified and quantified to any sufficient degree. This will be shown throughout the thesis and analysed in greater detail in chapter five discussing enrolled decrees and the decision-making process of

[210] Ibid, p.301.
[211] Margot Finn, *The Character of Credit: Personal Debt in English Culture, 1740-1914* (Cambridge: Cambridge University Press, 2003).

the court. Indeed, because of the complex and multi-layered nature of bankruptcy suits, the 'success' of the outcome would vary dramatically from one individual to the next, even within a defined party, such as 'plaintiffs' or 'defendants'. For example, while the assignees of a bankrupt may have initiated a suit in Chancery, they were doing so for the benefit of all of the creditors of the bankrupt, some of whom may not yet have come forward and proven their debts. Furthermore, they were doing so on behalf of the existing commission of bankruptcy, a legal procedure in its own right. With multiple claims arising over estates, I will argue that the level of complexity and the multifaceted nature of bankruptcy — and therefore credit networks and debt recovery more broadly — has been overlooked, and misunderstood, in the existing scholarship. While we might expect legal proceedings to be straightforward, or at least initiated with a sole purpose in mind, this is simply not the case, and I will demonstrate throughout the thesis that these suits were far more contested than the above scholarship has recognised.

The Analysis of Narrative in Legal Records

In turning to the use of language in legal documents, the manner in which scholars have analysed the concepts of narrative and storytelling, particularly in relation to the way in which these were constructed and turned into legal evidence, has again undergone a dramatic re-evaluation. The first scholars to utilise legal evidence in a substantial manner took their lead from anthropology. When we examine the aims of classical texts, such as Carlo Ginzburg's *The Cheese and the Worms* and Emmanuel Le Roy Ladurie's *Montaillou,* we can see how these scholars approached the concepts of narrative and storytelling in a legal setting. Firstly, Ginzburg's publication is entirely concerned with a single protagonist, Domenico Scandella, aka Menocchio, who 'maintained that the world had its origins on putrefaction' and was considered a heretic under the Roman Inquisition. As Ginzburg's preface unambiguously explains, 'this book tells his story … the records of his two trials,

held fifteen years apart, offer a rich picture of his thoughts and feelings, of his imaginings and aspirations'.[212] Similarly, in *Montaillou*, Ladurie analyses the Inquisition Register of Jacques Fournier, Bishop of Pamiers in Ariège, Comte de Foix — modern day Southern France — from 1318 to 1325, in an attempt to reconstruct a medieval peasant community.[213] As Thomas Kuehn has explained, what is central in these examples, is that the legal case acts as the central source, from which a type of narrative reconstruction of a set of events, ideologies, or historical insights broadens outwards. Kuehn cautioned against the limitations of micro-history, suggesting that the entire legal process was formative in terms of the construction of the narrative of a case. In this manner, the aim of the modern scholar should be to try to reconstruct 'the narrative of a trial'.[214]

More recent scholarship has built upon Kuehn's advice. In the preface to her 1999 publication, *A House in Gross Disorder*, Cynthia Herrup explains that the book 'is about the 1631 trial of Mervin Touchet, the 2nd Earl of Castlehaven, for assisting in the rape of his own wife and for committing sodomy with his servants'.[215] Herrup analyses the case from three distinct categories — biographical, legal, and literary — through which she demonstrates how the interpretation and meaning of the trial has shifted over time, reflecting the ways in which the trial has been utilised from the 1630s to the modern day. Herrup turns her attention away from seeking to understand which interpretation of the trial was correct, and instead toward which rendition 'was persuasive to whom, when, and why'. Ultimately, this approach allows Herrup to comment on the manner in which 'a scandal embedded in one century has

[212] Carlo Ginzburg, *The Cheese and the Worms: The Cosmos of a Sixteenth-Century Miller*, translated by John and Anne Tedeschi (London: Routledge, 1976), pp.xi-xiii.
[213] Emmanuel Le Roy Ladurie, *Montaillou: Cathars and Catholics in a French Village*, translated by Barbara Bray (New York: Penguin, 1978), p.vii.
[214] Thomas Kuen, 'Reading Microhistory: The Example of Giovanni and Lusanna', *Journal of Modern History*, vol.61, no.3 (1989), pp.512–35, 523.
[215] Cynthia B. Herrup, *A House in Gross Disorder: Sex, Law and the 2nd Earl of Castlehaven* (Oxford: Oxford University Press, 1999), p.xiii.

retained both its interest and its ability to shock in others'.[216] More recently Alastair Bellany and Thomas Cogswell have continued to shift the focus away from attempting to ascertain fact or fiction, innocence or guilt, while several other scholarly works have focused upon one trial, one case, or one dispute within a legal setting.[217] What is clear from these examples, is that the focus remains firmly placed on the trial itself, and the reconstruction of any subsequent narrative by historians has been developed from this focal point.

However, there are other approaches to narrative and legal evidence. Joanne Bailey has suggested that there have been two broad approaches to the interpretation of legal evidence. The first set of historians, 'act as "story-tellers", constructing stories of individuals, relationships and communities from legal testimony'. For Bailey this approach is flawed, as litigation does not provide a 'candid window' through which to view early modern society. Instead, litigation has more in common with fairground mirrors, 'reflecting back images distorted by several factors'. The second, and perhaps more nuanced approach, tends to focus on 'discourse', as scholars undertake the role of 'translators', who seek to 'decode the symbol and form' of the language presented in legal evidence. Yet, Bailey claims that this approach is similarly flawed, as it 'fails to differentiate between ideology and day-to-day experience, eliding the two without explaining how the former acted upon the latter'.[218] As Tom Johnson has bluntly put it, 'the old, empiricist quest for "real voices" in testimonies has to some extent

[216] Ibid, p.xvi.
[217] Alastair Bellany and Thomas Cogswell, *The Murder of King James I* (New Haven: Yale University Press, 2015); see Joanne Bailey, 'Voices in Court: Lawyers' or Litigants'?', *Historical Research*, vol.74, no.186 (2001), pp.392-408; Donna T. Andrew and Randall McGowen, *The Perreaus and Mrs. Rudd: Forgery and Betrayal in Eighteenth-Century London* (Berkeley: University of California Press, 2001); Andrew Hadfield and Simon Healy, 'Edmund Spenser and Chancery in 1597', *Law and Humanities*, vol.6, no.1 (2012), pp.57-64; Larry Neal, *'I Am Not Master of Events': The Speculations of John Law and Lord Londonerry in the Mississippi and South Sea Bubbles* (New Haven: Yale University Press, 2012); Clive Holmes, 'The case of Joan Peterson: Witchcraft, Family Conflict, Legal Invention, and Constitutional Theory', in Dyson and Ibbetson eds., *Law and Legal Process*, pp.148-166; Sadie Jarrett, 'Credibility in the Court of Chancery: Salesbury v Bagot, 1671-1677', *The Seventeenth Century* (2019), pp.1-26; Hannah Worthen, Briony McDonagh and Amanda Capern, 'Gender, Property and Succession in the Early Modern English Aristocracy: The Case of Martha Janes and her Illegitimate Children', *Women's History Review* (2019), pp.1-20.
[218] Bailey, 'Voices in Court', pp.406-407.

been replaced by a contemporary quest for "real discourses"'.[219] For Johnson, this approach is problematic, as it assumes that witnesses were passive, and the legal narrative was largely shaped by legal experts. As such, Johnson hopes to return a degree of agency to witnesses, by giving them 'some of their critical faculties back'.[220] While much of this analysis has been reserved for discussions of witness testimony as a form of evidence — which is analysed in greater detail in chapter three relating to depositions — there are broader issues relating to the construction of narrative within a legal setting. As Tim Stretton has claimed, it is 'perhaps unfortunate that Natalie Davis used the term *fiction* rather than *narratives* in the title of her influential book about archives, leading many readers to think of invention rather than creative structuring in legal testimonies'.[221] Ultimately, as the individuals creating legal discourse sought to be plausible and persuasive to the authority of the court, the resulting evidence therefore allows us to 'reconstruct norms, conventions, and moral benchmarks or templates by comparing multiple documents to determine which content was shared and which unique'.[222]

What we can see in the above analysis, is that while certain scholars continue to focus on the narrative or 'story' of a case, others have moved away from the legal dispute itself, and have instead turned their attention towards the narratives of individuals within legal arenas. However, as Stretton concludes, while the context of the dispute outside of the courtroom can be of great importance, this 'is matched by the need to understand the context of the courtroom itself'. In this manner, the creation, form, and utilisation of narrative 'were shaped

[219] Tom Johnson, 'The Preconstruction of Witness Testimony: Law and Social Discourse in England before the Reformation', *Law and History Review*, vol.32, no.1 (2014), pp.127-147, pp.127-128.
[220] Ibid, p.146.
[221] Stretton, 'Women, Legal Records, and the Problem of the Lawyer's Hand', p.696.
[222] Ibid, p.696.

according to the demands of the legal institution in which it was heard'.[223] This approach is further extended and broken down in this thesis, by not only analysing the narratives of individuals, but also by analysing the presentation of such narratives at each separate stage of proceeding. As such, each chapter pauses and concentrates on similar types of documents found at each phase of the legal process. As such, each chapter zooms in on the construction of narrative, as specific documents contained a distinct and purposeful use of language, which had been utilised in order to conform to the legal requirements of the court.

Before turning to some specific examples of how scholars have approached Chancery records, it is necessary to briefly reference the growing field of narrative studies within modern legal scholarship. Since the 1980s, there has been a mass of scholarship on narratives and storytelling in legal settings. For example, in a 1989 issue of *The Michigan Law Review*, dedicated to 'legal storytelling', the foreword suggested the rather simple notion that 'to make sense of law and to organize experience, people often tell stories'.[224] In this sense, the courtroom is not just about descriptive details and factual accounts, but about powerful analytical functions, as stories have the ability to organise large amounts of information in a precise and coherent manner. As W. Lance Bennett and Martha S. Feldman have shown, it is the structure, rather than verifiable facts, which determines the truthfulness of a story. As such, the narrative needs to be constructed in such a way as to make it believable to those who are tasked with interpreting it.[225] In a more recent publication, entitled *The Analysis of Legal Cases: A Narrative Approach*, Flora Di Donato undertakes a critical analysis of

[223] Tim Stretton, 'Social Historians and the Records of Litigation', in Sølvi Sogner ed., *Fact, Fiction and Forensic Evidence* (Oslo, Tid og Tanke: Skriftserie Fra Historisk insitutt Universitet i Oslo, 1997), pp.15-34, p.18.
[224] Kim Lane Scheppele, 'Foreword: Telling Stories', *Michigan Law Review*, vol.87, no.8, 'Legal Storytelling' (1989), pp.2073-2098, p.2075.
[225] W. Lance Bennett and Martha S. Feldman, *Reconstructing Reality in the Courtroom* (London: Tavistock Publications Ltd., 1981), pp.3-18; see also Caroline Lipovsky, 'Storytelling in Legal Settings: A Case Study from a Crown Prosecutor's Opening Statement', *Australian Review of Applied Linguistics*, vol.40, no.1, (2017), pp.71-91.

narrative within a legal setting. She demonstrates how narrative itself is dynamic and considers the manner in which storytellers construct, organise, and formulate a story for a specific purpose, most notably as persuasive argument within a legal case. Donato shows how this dynamic process undermines the concept of a legal narrative as a single story: 'narrating how facts took place is something like piecing a puzzle together, organizing the events as a function of how we generally expect that things happen, on the basis of scripts and categories that are modelled not only by the law, but also by culture'.[226] Indeed, as legal suits are by their very nature adversarial, there is never one objective plot or story within a case, as often the stories told are oppositional. As Colette Daiute explains, the experience and voices presented within legal settings are becoming increasingly democratised in the modern world, meaning that there is not a single narrative, 'but diverse ones situated in time, place, knowledge, goals and power'.[227] Understanding this complexity is essential to enable us to utilise legal records in an effective manner, and this broad approach to narrative is useful in contextualising scholarly approaches to legal documents. With this in mind, the specificities of suits involving bankruptcy can only be understood by examining the existing scholarship on Chancery.

The Analysis of Narrative in Chancery Records

The focus now turns to the way in which scholars have utilised Chancery documents, and the degree to which they have paid close attention to the process and procedures of the court, as well as the stages of proceeding. Scholars of the medieval period are restricted in the types of documents they can use, as prior to the fifteenth century only petitions or bills of complaint survive for Chancery cases. From around the 1450s, a limited number of defendants' answers

[226] Flora Di Donato, *The Analysis of Legal Cases: A Narrative Approach* (London: Routledge, 2020), p.2.
[227] Ibid, p.xiii.

begin to survive and the court began to formally record its decisions from about the 1530s.[228] Nevertheless, scholars of the medieval period have imaginatively utilised these documents in order to discuss a range of topics, including but not limited to, marriage disputes, testamentary cases, single working women, urban merchant identities, the involvement of legal experts in the creation of bills of complaint, and the presence of emotional discourse in such bills.[229] Indeed, it seems that because of such limitations, historians have paid close attention to how these documents were created, as well as the form and type of narrative presented in Chancery petitions. For example, Timothy Haskett — who was part of the *Early Court of Chancery England Project* (ECCE) — has investigated the 'conditions and aspirations' of parties involved in initiating suits from the late fourteenth to the early sixteenth century.[230] In numerous articles, Haskett analyses the composition of Chancery bills by asking the seemingly simple, but often overlooked, questions of how complainants proceeded in initiating suits, who they turned to for help, and how the final documents were created.[231] Haskett claims that the written English within bills shows their origin to have occurred outside of the court, 'indicating the activity in the country of men — very probably lawyers — who knew well the proper form with which to approach the court of chancery, and

[228] Merridee L. Bailey, 'Shaping London Merchant Identities: Emotions, Reputation and Power in the Court of Chancery', in Deborah Simonton ed., *The Routledge History Handbook of Gender and the Urban Experience* (London: Routledge, 2017), pp.327-337, p.330; Haskett, 'The Medieval English Court of Chancery', p.281.
[229] Sara M. Butler, 'The Law as a Weapon in Marital Disputes: Evidence from the Late Medieval Court of Chancery, 1424–1529', *Journal of British Studies*, vol.43, no.3 (2004), pp.291-316; Joseph Biancalana, 'Testamentary Cases in Fifteenth-Century Chancery', *Legal History Review*, vol.76 (2008), p.283-306; Cordelia Beattie, 'Single Women, Work, and Family: The Chancery Dispute of Jane Wynde and Margaret Clerk' in Michael Goodich ed., *Voices From the Bench: the Narratives of Lesser Folk in Medieval Trials* (Basingstoke, Hampshire: Palgrave Macmillan, 2006), pp.177-202; Bailey, 'Shaping London Merchant Identities', pp.327-337; Timothy S. Haskett, 'Country Lawyers? The Composers of English Chancery Bills', in Peter Birks ed., *The Life of the Law: Proceedings of the Tenth British Legal History Conference, Oxford 1991* (London: The Hambledon Press, 1993), pp.9-24; Timothy S. Haskett, 'The Presentation of Cases in Medieval Chancery Bills', in W. M. Gordon and T. D. Fergus eds., *Legal History in the Making: Proceedings of the Ninth British Legal History Conference, Glasgow 1989* (London: The Hambledon Press, 1991), pp.11-28; Merridee L. Bailey, '"Most Hevynesse and Sorowe": The Presence of Emotions in the Late Medieval and Early Modern Court of Chancery', *Law and History Review*, vol.37, no.1 (2019), pp.1-28.
[230] Haskett, 'Country Lawyers?', pp.9-24; Timothy S. Haskett, 'Conscience, Justice and Authority in the Late-Medieval English Court of Chancery', in Anthony Musson ed., *Expectations of the Law in the Middle Ages* (Woodbridge: Boydell Press, 2001), pp.151-164.
[231] Haskett, 'Country Lawyers?', pp.9-24.

who used it skilfully to present cases in a clear and forceful manner'.[232] Haskett distinguishes these 'country' products from the more common language and style of bills written in 'Chancery English'.[233] The use of unusual, distinct, and colloquial language, coupled with the varied nature of handwriting — and the fact that more than one scribe wrote on each document — meant that several bills were in fact composed outside Westminster and brought to Chancery to initiate a suit.[234] Such research illuminates the people and the processes that went into creating Chancery documents, and throughout the thesis this careful and considered approach will be applied in order to analyse the content of the surviving documentation.

A recent article by Cordelia Beattie is worth considering in detail, as the author undertakes a methodological approach which speaks directly to this thesis. Beattie utilises fifteenth-century Chancery bills to illustrate how women were engaged in multiple suits across a range of jurisdictions in order to negotiate solutions to a single social or economic issue. As Beattie explains, 'Chancery is only one piece of the puzzle of how women negotiated justice in late medieval England, but its records can also shed light on some of the missing pieces'.[235] Because Chancery bills often detailed the background to a social dispute, this could bring into view other courts, demonstrating 'how litigants might pursue justice in a number of arenas, consecutively or concurrently'.[236] As such, the specific social, economic, or legal disagreement may have begun prior to the initiation of a bill of complaint being submitted in Chancery. Yet, what is crucial in Beattie's analysis, is that we can reconstruct a narrative timeline of such an event from Chancery material alone, as such bills

> might give us only the start of a case in Chancery, but by necessity they almost always refer to a legal dispute already in process elsewhere and

[232] Haskett, 'The Presentation of Cases in Medieval Chancery Bills', p.13.
[233] Haskett, 'Country Lawyers?', p.12.
[234] Ibid, p.15.
[235] Cordelia Beattie, 'A Piece of the Puzzle: Women and the Law as Viewed from the Late Medieval Court of Chancery', *Journal of British Studies*, vol.58, no.4 (2019), pp.751-767, p.751.
[236] Ibid, p.766.

> sometimes to the backstory to the dispute. While such narratives were clearly constructed to advantage petitioners in their requests to Chancery, the bills were only necessary because the petitioners were running the risk of losing in another court.[237]

Ultimately, the information gathered from Chancery bills can demonstrate how individual parties were involved in multiple jurisdictions, for 'what was essentially one dispute'.[238] As such, the Chancery case is only a small part of a much broader dispute, and the rationale for the case coming to Chancery could be manifold. As Beattie concludes, rather than becoming frustrated by not being able to discover the outcome of a suit, or how it progressed in the court, we can analyse Chancery documents as 'one step in a more complex social and legal dispute and consider what light it sheds' on an individual's interaction with the law.[239]

A few points are worth making here. Firstly, throughout the thesis we will see cases involving bankruptcy which explicitly reference other jurisdictions, most commonly the common law courts. It would of course be possible to track down these suits in various other jurisdictions and analyse individual, or multiple, bankruptcies in their entirety. Yet, as explained above, this is not a thesis that seeks to come to a comprehensive understanding of early modern bankruptcy. Rather, the thesis concentrates on the manner in which cases involving bankruptcy have been brought before Chancery. As such, this can only provide one part of the wider narrative which often relates to a broader economic and social dispute. Secondly, twice in the above analysis we have seen the metaphor of a puzzle being utilised to demonstrate how scholars attempt to piece together individual stories to complete a whole, finalised case. This speaks to a broader trend in modern scholarship, whereby a range of scholars — both legal experts as well as social, economic, and legal historians — continue to desire some form of narrative closure relating to a case. Most commonly, this is seen in

[237] Ibid, p.753.
[238] Ibid, p.754.
[239] Ibid, p.758.

needing to present a case with a clearly defined beginning, middle, and end, and as was discussed above, an identifiable winner and loser. Returning to Cynthia Herrup, the author has concluded that a verdict, or the completion of a legal case, 'is the clearest point of a trial's history, but the weakest focus for a historian. It is a filter built from artificial materials and one that obscures as much as it clarifies, reinforcing rather than upsetting the notion of a trial as a story with an objective ending'.[240] In relation to Chancery suits, this desire to gain access to a definitive conclusion of a case is somewhat misguided. Even if we gain access to the completed 'story' of a suit, we can never verify the truthfulness or accuracy of such an outcome.

This brings us to the final point of analysis. Instead of seeking to follow a large number of cases through to their conclusion, the focus throughout the thesis will be concentrated upon what is revealed from each stage of proceeding. In each chapter, close attention is paid to a particular type of document, and the construction and use of narrative within these documents. In this way, we can see how a particular type of language has been constructed at each stage of proceeding, as well as analysing the people involved in this process. As a point of contrast, the final chapter of the thesis does follow one case through each stage of the legal process. But on the whole, this methodology does not allow an exploration of how a large number of suits progressed within the court. However, what this approach does enable is a qualitative analysis of those who were involved in the bankruptcy process, illuminating social and cultural aspects of debt recovery. For example, we are able to see how a range of individuals from the local community — many of whom were not creditors, debtors, or even parties in the suit — utilised legal and economic terms and assessed individual bankrupts. I will argue that witnesses — in collaboration with lawyers and officers of the court —

[240] Herrup, *A House in Gross Disorder*, p.6.

maintained a degree of agency over the words and phrases they used. As such, the specific and evaluative language utilised in Chancery documents illuminates wider social and cultural attitudes towards the assessment of failure within the community.

Chapter Outlines

At this juncture, it is important to discuss exactly what is meant by a 'case' or 'suit' in Chancery. While on the surface this could appear straightforward, it is possible for indexes — both online and in physical form at The National Archives — to list the same short description — the first named plaintiff and the first named defendant — which relate to separate disputes. Horwitz uses the example of four references between 1627-1632 entitled *Eyre v Wortley*, all of which concerned the legitimacy of a deathbed will made by a deceased merchant. However, these references actually refer to two suits, as the relatives of the merchant sued his widow — Hester who had remarried Sir Francis Wortley — by submitting two separate bills of complaint.[241] This can become further complicated if a named party died or an individual submitted a bill of revivor at a later date. As such, it is possible for a sole issue to involve multiple suits being executed across several legal jurisdictions. In this manner, it is of course possible to trace an individual bankruptcy through the stages of proceeding in Chancery. However, this would be an extremely complicated and time-consuming process, as it would involve multiple suits with different named plaintiffs and defendants. Furthermore, these cases would be treated individually by the court and would be subject to separate proceedings.

[241] Ibid, pp.93-96.

In turning to the chapters, the first two chapters analyse the pleadings stage of proceeding. Chapter one examines the manner in which cases were initiated in Chancery, illustrating the reasons why those involved in a commission of bankruptcy sought redress from the court. The second chapter discusses the degree to which the commission, and knowledge of the individual actions of a bankrupt, were widely known to those within the trading community. Particular attention is paid to the timing of specific events as those within the legal process sought to establish a coherent timeline of failure. These chapters demonstrate that the ideals established in the statutes did not always conform neatly to the practical realities of procedure. Indeed, Chancery pleadings grant us access to how individuals dealt with specific issues and managed to circumnavigate problems within a commission of bankruptcy, areas which until now have not been discussed in detail in the existing scholarship. The next two chapters turn to the evidential stage of proceeding. Chapter three analyses the specific and evaluative language utilised in depositions, as a wide range of witnesses were interrogated on particular aspects of an individual failure. This stage of proceeding provided a platform for a range of witnesses to comment on an individual bankruptcy, and by analysing the specific words and phrases used in the formulation of narratives concerning bankruptcy, we can illuminate wider social attitudes towards failure. The fourth chapter looks specifically at Masters' exhibits as a form of evidence and the serendipitous nature of their survival. In order to utilise these documents in any meaningful way, it is necessary to limit the discussion to one particular type of source: bankruptcy commissioners' files. This is the first time that such a source has been analysed for this time period, significantly adding to our understanding of the history of bankruptcy by demonstrating the way in which the commissioners undertook their tasks. The same set of methodological questions surrounding the creation and nature of witness testimony is applied to both of these chapters.

Chapter five then focuses on the final stage of the process in Chancery by analysing a set of enrolled decrees. It is important to note that this final stage in Chancery very rarely offered a definitive conclusion to the wider economic dispute, as the collection and redistribution of the bankrupt's estate could occur in a number of ways. However, this chapter again enhances our understanding of early modern bankruptcy by demonstrating the manner in which the court acted as a type of arbitrator, attempting to render a fair and equitable judgement to each individual claim. The final chapter departs from the methodology employed in the preceding chapters by analysing one case in detail through the whole range of records. As close attention has been paid to the use of language and the construction of narrative at each stage of proceeding, this final chapter seeks to demonstrate how the use of language altered according to the legal requirements of the court. This chapter highlights the extensive time, effort, and expense that was required to undertake such a task.

Turning to the cataloguing of these documents, scholars in the past ten to fifteen years have changed the way in which they approach archives, in what the anthropologist Ann Stoler first called the 'archival turn'.[242] As Alexandra Walsham, Kate Peters, and Liesbeth Corens explain, the arbitrary nature of archival survival dictates whether 'the documents we require to write history live or die'. According to the authors, such 'archival death', created by neglect or the inaccessibility of certain records — often due to factors such as geography, expense, political climate etc. — directly determine 'which stories we can tell, the truths we can uncover, and the kinds of scholarship we can carry out'.[243] As such, the methodological outline provided below is not simply about describing the difficulties relating to identifying

[242] Ann Laura Stoler, 'Colonial Archives and the Arts of Governance', *Archival Science*, vol.2, no.1 (2002), pp.87–109.
[243] Alexandra Walsham, Kate Peters and Liesbeth Corens, 'Introduction', in Liesbeth Corens, Kate Peters and Alexandra Walsham eds., *Archives and Information in the Early Modern World* (Oxford: Oxford University Press, 2018), pp.1-25, pp.24-25; See also Sylvia Sellers-García, 'Death, Distance, and Bureaucracy: An Archival Story', in Corens, Peters, Walsham eds., *Archives and Information in the Early Modern World*, pp.263-284.

and discovering documents, but has wider ramifications for the use of Chancery documents for future scholars. Figure 2 shows the cases upon which the chapters are based, as well as the different series for each stage of proceeding.

Figure 2: Sample of Cases for Each Chapter

Chapter	Number of Cases	Series
Pleadings part I	228	C5, C6, C7, C8, C9, C10, C11, C12
Pleadings part II	"	"
Depositions	54	C11, C12, C21, C22, C128
Masters' Exhibits	29	C103 through C116; C171
Enrolled Decrees	43	C78, C79
Hancock v Halliday	1	C11, C12, C31, C33, C38, C120, C276,
Total:	355	33

We can see from the table that 355 cases have been discovered from 33 separate series. The specificities of these filing and cataloguing details will be explained in detail in the introduction to each chapter, but there are a number of issues in common throughout the chapters. For example, the documents which survive within a single reference can vary dramatically from one suit to the next, ranging from anything between a single piece of parchment, to a mass of documentation concerning a single case. Furthermore, the procedure of the court and the manner in which these documents were created means that it is difficult to undertake any meaningful quantitative analysis. Often, the overall debt due to the commission of bankruptcy is either unknown, not specified, or vehemently debated. Similarly, due to the survival rate of the documents — and the fact that additional defendants could be added after the initial bill of complaint was submitted — it is difficult to ascertain the total number of individuals involved in a suit. Indeed, because of the individuality of both

the bankruptcy process and the form of investigation in Chancery, these documents present themselves as prime for qualitative analysis.

This introduction has provided a detailed overview of bankruptcy procedure, as well as the administration and equitable jurisdiction of the court of Chancery. Furthermore, the introduction has outlined the existing historiography surrounding these two topics in order to demonstrate how scholars have rarely combined the two in their research. This has been necessary in order to establish a number of technical details, which will be referred back to throughout. It is essential to have a firm understanding of how these two initially autonomous legal systems operated, before analysing the way in which bankruptcy came to be litigated in Chancery. Indeed, the methodology of analysing each stage of proceeding in isolation can only be understood and appreciated by having a firm understanding of how, and why, a commission of bankruptcy came to Chancery to seek the aid and assistance of the court in the ongoing process. In contrast to the work of Muldrew, who presents credit and debt recovery in too simplistic a manner, I will argue that the formal authority of Chancery was needed in order to maintain and uphold a complex system of debt recovery.[244] As such, the thesis will highlight the importance of utilising Chancery sources in order to gain a more nuanced understanding of early modern bankruptcy, as the complex and multifaceted nature of debt recovery has been overlooked, and misunderstood, in the historiography. Similarly, in contrast to the work of Andy Wood, who has undertaken a multi-court analysis in order to 'cull' sources from multiple stages of proceeding, I will demonstrate that scholars can only understand how a topic was litigated by pausing and analysing each stage of proceeding in isolation.[245] Promulgating such a methodological approach has wider ramifications for the use and classification of legal documents by historians, as scholars must explicitly explain

[244] Muldrew, *The Economy of Obligation*.
[245] Wood, 'Fear, Hatred and the Hidden Injuries of Class in Early Modern England', pp.803-826.

which types of documents they are using, and from which jurisdiction and phase of the legal process, they have been utilised.

By undertaking such a methodological approach, the thesis informs our historical understanding of the social and cultural meanings of debt collection. As Chancery was an institution which helped to create legal narratives, the thesis provides evidence of the manner in which the court mediated in social and financial affairs. This can inform us of how economic knowledge was disseminated and shared within the trading community. As well as containing strategic constructions created to conform to the legal requirements of the court, Chancery documents were contingent upon the memory, interpretation, and moral judgements of a range of individuals who utilised the court for their own benefit. Throughout the thesis, we will see how creditors, debtors, bankrupts, and witnesses expected others to act — both in the past and in the future — highlighting the norms and values of wider society. However, because of the complexities and interconnected nature of bankruptcy suits, we also see how such concepts interacted with the court's conception of conscience as a juristic principle. In several instances, it was not just the bankrupt's actions that were scrutinised, but other members of the process, further complicating our historical understanding of how an equitable court came to make decisions based upon the concepts of fairness and justice. Indeed, as the narrative altered through the different stages of proceeding, we will see how such procedures destabilised the appraisal of an individual's worth in society and how this problematised the idea of delegated conscience.

In this manner, the concept of failure is a crucial component to the thesis and is closely aligned to the flow of information and circulating judgements surrounding bankruptcy. But again, this notion of failure is complex. In its simplest terms, the bankrupt had legally failed to repay a debt in a satisfactory time period. They were also seen to be immoral, as they had

failed to fulfil their responsibilities and behave in a trustworthy and credible manner. Yet, as we work through the different stages of proceeding, we will see how this notion of failure extended to other individuals within a suit, as creditors, assignees, and bankruptcy officials were seen to fail in their duties. This could take a variety of forms, ranging from the failure to perform a simple task at a designated time, to fraudulently concealing goods to the detriment of creditors. Complaints were levelled against such individuals as the costs of a commission, the ongoing suit, and the wider debt-recovery process continued to increase. In this sense, it was not simply the bankrupt who had failed. This becomes increasingly complex as bankruptcy suits involved an interconnected network of indebtedness which often included close relatives, neighbours, and traders from the local community. In such a manner, we see how these manifestations of failure were played out within the court, as we gain access to these closely connected social ties. By analysing the use of the specific and evaluative language present in the written documents that survive, we can illuminate the multiple meanings of key words and phrases used to describe and denote such failures. The multiple meanings of legal terms — such as ‘acts of bankruptcy’ — are analysed alongside wider social and cultural terms — such as ‘sinking’ and melancholy — to demonstrate assessments of what were considered publicly acceptable behaviour on the one hand, and what had become a threat to social order on the other. This adds to our historical understanding — and particularly to the works of Muldrew and Shepard — on the social aspects of circulating knowledge and cultures of appraisal within the wider economy. Ultimately, the thesis sets out to uncover how this multifaceted notion of failure — especially as a social construct at law — was established and debated so that the court could arbitrate and mediate in complex financial arrangements.

Chapter One: Bankruptcy Pleadings in the Court of Chancery

Introduction

As an editor of a publication entitled *Dealing with Economic Failure: Between Norm and Practice (15th to 21st Century),* Margrit Schulte Beerbühl has suggested that due to the penalizing character of the law, bankruptcy 'was something to be avoided at nearly any price … conflict reduction and prevention for the benefit of good governance have been the guiding principles throughout the centuries'.[1] This is certainly oversimplifying attitudes to early modern bankruptcy, especially as after 1706 the discharge provision provided certain incentives to debtors. However, Beerbühl does promulgate the need for researchers to 'not only study the provisions of the bankruptcy laws, but look at the practice of handling failures by the parties concerned'.[2] This chapter undertakes such an approach by analysing pleadings — bills of complaint and their subsequent answers — found at the first stage of proceeding, in order to assess the reasons why individuals initiated a suit in Chancery and sought the assistance of the court in the ongoing bankruptcy process. Because bills of complaint needed to show that the suit fell within the equitable jurisdiction of the court, and the defendants had somehow acted against conscience, pleadings provide a clear, chronological description of the path that the commission of bankruptcy had taken, and the specific details of how this procedure had failed. While the introduction to the thesis outlined the manner in which scholars have approached the narrative presented in legal sources, this chapter analyses the construction of language in pleadings. Yet, rather than approaching such documents as containing strategic and convincing storytelling, which can inform us about norms and values of the period, this chapter will focus on the specific details provided to us in the documents

[1] Beerbühl, 'Introduction', p.14.
[2] Ibid, p.13.

that survive. Undertaking such an approach will demonstrate that there were clear disparities between the legal ideals established in the statutes and contemporary commentary, and the practical realities of bankruptcy procedure.

Such a disparity took three forms. Firstly, in the introduction to the thesis, we have seen how legal scholars have analysed the statutory creation of discharging a bankrupt from their debts, and providing a subsistence for their family in 1706, as a monumental change in bankruptcy law, as the law effectively changed from simply a creditor's collection device, to one that granted certain privileges to debtors. This was seen as a means to try to encourage truthful cooperation on the part of the bankrupt to fully reveal their assets. However, this chapter will show that discharge was happening in an informal manner prior to this date. As such, the 1706 statute will be examined in two ways: firstly, it can be seen as a means of the law catching up with the realities of the bankruptcy process, and secondly, it can be viewed as the law actually altering the practicality of procedure. Secondly, despite bankruptcy procedure placing all creditors on an equal footing and providing greater authority and certainty, creditors still exhibited a genuine concern that they would receive less than another party in the process. Multiple individuals were accused of manipulating the legal process for their own benefit and to the detriment of others. Finally, from the total of 228 cases utilised in this chapter, there are twelve examples where a bankrupt appears as a plaintiff, and in four of these cases the bankrupt took direct aim at the work of the commission itself. These suits are illuminating, as they demonstrate ongoing debates between the work of the commissioners and the assignees on the one hand, and the individual most directly affected by the process on the other. While in any legal or bureaucratic system there are bound to be disparities between the idealised procedure and the practical realities of day-to-day experience, these pleadings reveal specificities about the problems and issues which arose as this process was underway. By analysing pleadings in isolation, it not only allows a greater quantity of cases to be

utilised, but also enables a fuller discussion of how bankruptcy reveals itself at this stage of a proceeding. Analysing such details greatly enhances our understanding of early modern bankruptcy.

This chapter is divided into three sections. The first section outlines the filing of these documents and their subsequent cataloguing at The National Archives. Because the sample of 228 pleadings forms the basis of the first two chapters, it is necessary to provide a detailed summary of how these sources were identified. The second section pays close attention to the composition of bills of complaint and the manner in which these documents were created and utilised by individuals seeking redress from the court. Specific attention is paid to how a range of scholars have approached and used these sources in their research. The final section analyses the three disparities outlined above in greater detail.

The Filing and Cataloguing of Chancery Pleadings

This section outlines the obstacles that needed to be overcome in order to establish a suitable number of cases that involved bankruptcy. As the entirety of pleadings discovered for this chapter were identified by an online search of the term 'bankrupt' in the relevant series, it becomes necessary to describe this process in detail. Figure 3 shows a simplified version of the modern cataloguing descriptions for Chancery pleadings — available on The National Archives Website — which is displayed in chronological order from 1558-1800.[3]

[3] TNA online catalogue, stable URL: https://discovery.nationalarchives.gov.uk/browse/r/r/C3565/prev/C3595/C5694291 accessed 2/1/2020.

Figure 3: Cataloguing of Pleadings at TNA

Date Range	Catalogue Reference	Description	Additional Information
1558-c.1649	C2	Chancery Proceedings: Series 1	Not All Searchable Online
1558-c.1660	C3	Chancery Proceedings: Series 2	Searchable Online
1570-1714	C8	Six Clerks Series: Mitford Division	Not Searchable Online
1613-1714	C5	Six Clerks Series: Bridges Division	Searchable Online
1620-1714	C7	Six Clerks Series: Hamilton Division	Searchable Online
1625-1714	C6	Six Clerks Series: Collins Division	Searchable Online
1640-1714	C10	Six Clerks Series: Whittingdon Division	Searchable Online for first named plaintiff, first named defendant and county for roughly half the series
1649-1714	C9	Six Clerks Series: Reynardson Division	Searchable Online for first named plaintiff and first named defendant
1715-1758	C11	Various Six Clerks: Series 1	Searchable Online
1758-1800	C12	Various Six Clerks: Series 2	Searchable Online for first named plaintiff and one defendant

The filing of the original pleadings was the responsibility of the plaintiff's Six Clerk. Prior to 1714, the Six Clerks filed pleadings separately, leading to six modern day catalogues for this period. As Figure 3 illustrates, classes C5 to C10 are the Chancery pleadings from the Six Clerks' office — ranging from 1570-1714 — which were named after the Six Clerks who held the office at various times throughout this period. However, after 1714, the Six Clerks filed all pleadings together, creating two single classes: C11 for 1715-1758, and C12 for 1758-1800. Modern cataloguing of these classes has been completed to contrasting standards across the series.

Looking at the pre-1714 classes, C6 has been catalogued to the highest standard. The *Equity Pleadings Project*, which was completed in 2003, employed an indexer for two years to input documents from C6 onto the online database at The National Archives. Prior to the

commencement of this project, work on C6 had been abandoned, as it became apparent that it was too time consuming — and thus too expensive — to extract detailed descriptions of subject matter. As part of the project, Mary Clayton outlines the pragmatic approach that was taken when returning to catalogue this series: 'The aim of the Equity Pleadings Project is to have the essential information from the cases entered onto the database within the shortest possible time. There is not enough time to read everything, so compromises have had to be made'.[4] While the indexer used original documents to catalogue the database, several volunteers entered details onto the database directly from the original physical indexes, having never seen the original documents. The quality of these indexes is variable, and without seeing the original documents themselves, the modern catalogue descriptions created by the volunteers are themselves variable and subject to errors. Furthermore, as Clayton reveals, 'it was decided that the Indexer appointed to input data from the actual documents would start at box C6/360 as the indexes for the boxes from here have just the name of the suit, i.e. the surname of the first named plaintiff and the first obvious defendant, and no other information at all'.[5] From the work of the indexer — and where possible from the data collected from volunteers — the names, status, occupational ascription, role in the suit — i.e. testator, intestate, bankrupt, guardian, next friend — and place of residence were extracted for all parties in a case, with a brief indication of subject matter described separately. This means that the overall C6 database has itself been compiled to contrasting standards, and entries vary in quality from one case to the next.[6]

However, without the work undertaken by the *Equity Pleadings Project* it would not have been possible to discover a suitable sample of cases through an online search before 1714.

[4] Clayton, 'The Wealth of Riches to be Found in the Court of Chancery', p.27.
[5] Ibid, p.26.
[6] Ibid, pp.25-31.

Returning to Figure 3, C8 is not searchable online, while C9 and C10 are only searchable online for the first named plaintiff and named defendant. While it is possible to conduct an online search for series C5 and C7, this only returns one result for 'bankrupt', as the role of individuals in the suit has not been extracted from these documents on a large scale.[7] Ultimately, it is the two years of cataloguing and recording the details of the documents in C6 on The National Archives' online database which have enabled the discovery of sixty-six cases between 1674-1714. Undoubtedly, there are many more cases involving bankruptcy to be discovered — not only in C6 but in the further five series — within the vast records held at The National Archives. However, the subject categories on The National Archives' website are very general, with the most common being simply listed as 'money'.[8] Indeed, a subject-specific search for 'money' within the date range of the thesis returns over 50,000 results.[9] But what is important to note, is that while these sources have all been discovered in the C6 series, their document type, content or subject matter would not have differed between each class. This is because the early modern procedure for filing documents was identical for each Six Clerk and it is only the subsequent modern cataloguing which is different between series. As such, the sources utilised in this chapter can be considered a representative sample of cases involving bankruptcy during the period.

In contrast, the post-1714 series C11 is obviously far larger, consisting of all pleadings from the Six Clerks combined. While the series has not been catalogued to the standard of C6, it still provides more information than the other pre-1714 classes. Through various conversations and meetings with staff at The National Archives, the process of cataloguing

[7] TNA, C7/602/30, 'Streete v Bateman' (1688).
[8] Horwitz, *A Guide to Chancery Equity Records*, p.70.
[9] TNA, discovery, URL: https://discovery.nationalarchives.gov.uk/results/r?_ep=subject%3A%20money&_cr=c5%7Cc6%7Cc7%7Cc8%7Cc9%7Cc10&_dss=range&_sd=1674&_ed=1750&_ro=any&_hb=tna&_st=adv accessed 3/1/2020.

this series can be summarised as follows.[10] In the early twentieth century, the genealogist Charles Bernau put together a team to work on Chancery records after 1714. Beginning with C11, they attempted to extract as much detailed information as possible. However, as this became more time consuming, the level of detail in the references dropped off and became limited to names and places. When modern work began on extracting information it was decided from the outset not to extract detailed subject matter, and instead only names, residences, occupations, and relationships are available to the modern researcher. This again means that the C11 database has been compiled to contrasting standards. In a 2014 article, Sean Bottomley explains the recent improvements in the cataloguing of the C11 series, as the catalogue now provides 'the full names of all parties, a precise case year and very often the occupations and residencies of the plaintiff(s) and defendant(s)'.[11] When researching patent cases in the court, Bottomley suggests that these improvements allow 'a much more refined means of searching for cases in C11'. However, a subject-specific search for 'patent cases' is not possible, as 'patent cases' are not a designated subject category. Instead, Bottomley's methodology consisted of cross-referencing known patent holders with the names of plaintiffs in Chancery in order to establish a reliable source base.[12]

Luckily, while C11 does not give extensive descriptions of subject matter, the series does note when a case dealt with bankruptcy. Indeed, a search for the term 'bankrupt' returned a total of 971 references between 1674-1750, so a five-year sample — beginning at 1700 and ending at 1750 — was undertaken in order to reduce the number of cases to a manageable total of 228. This is shown in Figure 4 below along with the physical documents which have

[10] I would like to thank Liz Hore and Amanda Bevan at TNA for their time and enthusiasm in explaining the complicated cataloguing of these documents.
[11] Bottomley, 'Patent Cases in the Court of Chancery', p.35.
[12] Ibid, p.35.

survived for each case.[13] One final point to make is that it has been estimated that as much as fifteen per cent of C11 documents have been misfiled in C12.[14] However, when Bernau's staff came to work on C12, they decided from the outset to simply extract names, and pleadings in C12 are only listed by short title with an abbreviated description of document type. As such, it is extremely difficult to compile data from this series, as C12 cannot be successfully searched online for subject matter.[15]

[13] TNA 'discovery', correct as of 2/1/2020. This number may increase as work continues on the cataloguing of various series, stable URL: https://discovery.nationalarchives.gov.uk/results/r?_aq=bankrupt&_cr=c5%7Cc6%7Cc7%7Cc8%7Cc9%7Cc10%7Cc11&_dss=range&_sd=1650&_ed=1750&_st=adv&_hb=oth

[14] Horwitz, *A Guide to Chancery Equity Records*, p.71, n.26.

[15] An online search for 'bankrupt' within C12 between 1750-1800 only returns 27 results, 23 of which are examinations or depositions, URL: https://discovery.nationalarchives.gov.uk/results/r/1?_aq=bankrupt&_cr=c12&_dss=range&_ro=any&_hb=tna&_st=adv accessed 2/1/2020.

Figure 4: Table of Pleadings

	Year	Number of Cases	Bills of Complaint	Copy Bills	Answers
	1674-1699	46	18	12	65
	1700	7	3	2	8
	1705	5	4	1	6
	1710	9	7		10
	1715	11	11		13
	1720	28	28		30
	1725	24	22		24
	1730	27	24		41
	1735	25	27		42
	1740	17	13		23
	1745	16	13		20
	1750	12	13		11
Total		228	183	15	293

Discussing the rate of eighteenth-century bankruptcies, Hoppit has shown how the numbers of bankrupts were 'relatively low and steady through the first half of the century, before rising very steeply and continuously thereafter'.[16] In comparing my sample to Hoppit's analysis, the overall data seems to align with the rate of eighteenth-century bankruptcies, as while there is a slight rise in the number of cases beginning in 1720, this is minimal and drops off again between 1740 and 1750. As such, we would not expect to see a significant

[16] Hoppit, *Risk and Failure in English Business*, p.46.

increase in the number of suits initiated in Chancery concerning bankruptcy until the number of actual bankruptcies increased in the latter part of the eighteenth century. If we look at the individual documents which create this stage of proceeding, we see that within these 228 cases, 183 bills of complaint and 293 responses survive. These responses can be further broken down: three are a joint plea and answer, three are a joint demurrer and answer, one is a sole demurrer, one a sole plea, and there are two examples of a joint plea, demurrer, and answer combined. To recap, a plea sought to raise an objection to a point in law — usually that the suit should not be heard in an equitable jurisdiction — while a demurrer argued that the facts of the case did not present a cause which they might reasonably answer. The remainder are the more common sworn answer. While we would expect to find more answers than bills of complaint — the plaintiffs combined would submit one bill of complaint, whereas it would often be necessary for defendants to submit distinct and separate answers — the survival of answers on their own is frustrating. Obviously, answers were only made if an original bill had been submitted and were physically attached to the original bill itself. Yet, due to loss or misfiling not all answers survive alongside bills. Horwitz has estimated that between five and ten percent of all pleadings throughout the seventeenth and eighteenth centuries consist of answers or other responses without bills.[17]

Within my sample, fifty-two references consist of answers without their original bills, accounting for over twenty per cent of the total. However, in fourteen of these suits, fifteen copy bills have been attached to the answers, bringing the percentage down to approximately sixteen per cent, and aligning closer to Horwitz's estimates.[18] More or less simultaneously to the submitting of the bill, the complainant would secure an issuance of a subpoena ordering

[17] Horwitz, *A Guide to Chancery Equity Records*, p.51.
[18] Copy bills are drastically reduced in both their size and content, meaning it can be difficult for the modern reader to establish the key facts and details of the case, see Clayton, 'The Wealth of Riches to be Found in the Court of Chancery', pp.25-31.

the defendant(s) to appear and answer the bill under oath. Only sixty-four subpoenas survive, which reflects the size and durability of these small documents, as they could easily become detached, damaged, and lost. In fifty suits, at least one of the parties decided to annex a schedule of payment, or copy of an account, as part of their complaint or answer. This was a fairly common occurrence and was done in order to add credibility to their statements to the court, as they could provide copies of their financial transactions.[19] For example, in *Browne v Bamforth* (1696), the entirety of the suit concerned the size of the bankrupt's estate that had come into the defendant's possession. As such, both parties exhibited several schedules to demonstrate their interpretation of previous financial transactions.[20]

From a purely legal standpoint, this is an example of a suit which was entirely concerned with the ongoing bankruptcy process. However, if we take this approach across the entire sample, there arises what could be considered a crude spectrum involving debt recovery. At one end of this spectrum, cases are presented such as *Browne v Bamforth*, whereby the central issue of the suit is the bankruptcy process. However, at the other end of the spectrum, bankruptcy simply presents as a side issue, itself intersecting with wider concerns surrounding the economy. In a broader sense, this overlapping of subject matter is not uncommon in Chancery. Returning to issues surrounding cataloguing, Mary Clayton has suggested that often a pleading in Chancery is so involved and interconnected in terms of subject matter — with several characters interacting, marrying, mortgaging, dying etc. — that to give a clear account of the case would require a long and complicated description.[21] This is also the case in bankruptcy suits, and perhaps the clearest example of this can be seen in *Charitable Corporation v Chase* (1735), as within this suit there were at least twenty five

[19] Ibid, pp.25-31.
[20] TNA, C6/381/15, 'Browne v Bamforth' (1696), Bill of Complaint; Answer of George Bamforth.
[21] Clayton, 'The Wealth of Riches to be Found in the Court of Chancery', p.27.

named defendants, and only four of which were assignees of two bankrupts.[22] It could be argued that this case is only about bankruptcy in passing, yet, it is worth investigating this claim in greater detail.

The full title of the plaintiffs in *Charitable Corporation v Chase* are, 'The Charitable Corporation for the Relief of Industrious Poor by Assisting Them With Small Sums Upon Pledges at Legal Interest', a corporation that has recently attracted research.[23] Described as a 'for-profit business run for a charitable purpose', Peter Brealey has shown how simply 'reconstructing the events surrounding the Corporation's rise and fall reveals an epic tale of financial malfeasance featuring greed, betrayal and intrigue'.[24] This case was entered in Chancery in 1735 as part of several ongoing and extended legal battles, after a massive fraud within the company had been discovered. Through an ongoing scheme of embezzlement by their previous management, the plaintiffs estimated their losses to be over £400,000. As such, a commission of bankruptcy was taken out against two former employees, George Robinson and John Thomson, and while they absconded abroad and did not appear as defendants in the suit, four of their surviving assignees were named as defendants.[25] The central issue of a case involving such a large corporation and such a monumental fraud, is clearly relating to issues outside of the bankruptcy process. Indeed, only two of the nineteen answers are from the assignees. Yet, even within these circumstances, we can still begin to see how bankruptcy intersects with such issues. William Wilkinson, the surviving assignee of Thomson, promised to satisfy the claims of all creditors who 'come in and seek relief under the said Commission'. Wilkinson stated that once the plaintiffs had proven their debts within the commission, he would be ready and willing to 'satisfy the same out of the said Thomsons

[22] TNA, C11/521/10, 'Charitable Corporation v Chase' (1735).
[23] Peter Brealey, 'The Charitable Corporation for the Relief of Industrious Poor: Philanthropy, Profit and Sleaze in London, 1707-1733', *History*, vol.98, no.333 (2013), pp.708-729.
[24] Ibid, pp.709-710.
[25] TNA, C11/521/10, 'Charitable Corporation v Chase' (1735), Bill of Complaint.

Estate … in proportion with his other Debts in such manner as this Honourable Court shall Direct'.[26] The assignees of Robinson similarly agreed to satisfy the debts of the complainants, contingent on them paying their contribution money and entering the commission. From supplementary material, Brealey has suggested that out of a potential estate of several tens of thousands of pounds, the assignees were only expecting to recoup a few hundred.[27] It may be that the defendants were only paying lip service to this notion, but it does demonstrate how the plaintiffs would have had to seek their debts in accordance with the correct procedure outlined within a commission of bankruptcy. This illustrates that even cases where bankruptcy initially appears only on the periphery of a suit still hold a great interest in demonstrating the correct and ideal bankruptcy process and how this intersected with external issues in the wider economy. As such, it is worth bearing this spectrum in mind throughout the thesis, as while all cases were said to involve the bankruptcy process, it cannot be said that all cases were exclusively to do with bankruptcy alone. Overall, the combination of these documents provide rich details of the reasons why a variety of individuals sought assistance from the court in the ongoing bankruptcy process.

The Creation of Bills of Complaint

Having outlined the filing and cataloguing of pleadings, this section pays close attention to the procedure of the court, and the process that went into composing and creating bills of complaint and their subsequent answers. The procedural rules of common law — through the purchase of a writ in Latin — ensured that the pleading was confined to a single issue, narrowly defined, in order to initiate a particular type of action. In Chancery, a complainant

[26] Ibid, Answer of William Wilkinson.
[27] Brealey, 'The Charitable Corporation for the Relief of Industrious Poor', pp.708-729.

did not have to specify their form of action, instead submitting a bill of complaint in non-technical language, outlining their situation and asking for relief in general terms.[28] Indeed, many Chancery bills asked for relief from the consequences of the technicalities of common law procedure. As William Jones states, this 'tradition of flexibility', held a real basis in fact and was not to fade even after the Chancellorship of Nottingham.[29] Horwitz has suggested that the development of Chancery procedure can be seen as 'ample testimony to the Court's commitment to investigate thoroughly each complaint brought before it'.[30] However, in contrast to depositions — discussed in detail in chapter three — very little scholarship has focused on the process of composing and creating bills of complaint in Chancery.

The work of Timothy Haskett and the ECCE project was outlined in the introduction to the thesis. In relation to pleadings, Haskett demonstrates that despite the less formal procedure in Chancery in comparison to the process of purchasing a common law writ, the court 'did not offer an opportunity for success upon slipshod or uniformed petitions: bills could and did fail'. Just as a common law suit would be unsuccessful if the incorrect writ was purchased, so too would a Chancery case fail if the bill submitted was faulty in substance or form.[31] Medieval Chancery bills displayed a distinct canon of form — which Haskett divides into 11 sections — and 'composers, scribes and assessors worked hard to ensure correctness', in order to increase their chances of success.[32] John Fisher has suggested a good hand and proper use of legal language was still the 'monopoly of a small body of professionals' during

[28] Horwitz, *Exchequer Equity Records and Proceedings*, p.10.
[29] Jones, *The Elizabethan Court of Chancery*, p.195.
[30] Horwitz, *A Guide to Chancery Equity Records*, p.3.
[31] Timothy S. Haskett, 'The Judicial Role of the English Chancery in Late-Medieval Law and Literacy', in Kouky Fianu and DeLloyd J. Guth eds., *Écrit et Pouvoir dans les Chancelleries Médiévales: Espace Français, Espace Anglais* (Louvain-La-Neuve: Federation Internationale des Instituts d'Etudes Medievales, 1997), pp.313-332.
[32] Ibid, p.323; see also Haskett, 'The Presentation of Cases in Medieval Chancery Bills', pp.11-28.

the fifteenth century, likely to have been educated in Chancery tradition.[33] However, Haskett believes that in order to account for the sheer scale of Chancery bills being presented to the court, the knowledge of this 'core group' had to have been disseminated — through training and by example — to a larger number of individuals outside of Westminster. Ultimately, such a transfer of knowledge and the composition of Chancery bills was conducted at an increasing pace over the course of the fourteenth and fifteenth centuries. This is indicated by the maintenance in the bill of a 'canon of form, though with variable style, and in their partial use of elements of the emerging Chancery English'.[34] Rather than constricting the composers of Chancery bills, Haskett claims that the increasing formalisation actually enabled a greater scope of expression, as 'once the requirements of the form are realised the writer can exploit fully the opportunities that come into existence through the act of formalisation'.[35] Ultimately, medieval Chancery bills allowed a wide range of expression, clearly explaining how an individual, or set of individuals, had become involved in a particular situation, as well as the specific redress they sought from the court.

While no similar in-depth analysis of Chancery bills exists for the early modern period, it is commonplace that the court saw a dramatic increase in lawyers at every stage of proceeding. As such, pleadings were drafted with the aid and advice of a legal expert and as far as the court was concerned, these advisers were nearly as responsible for the content of bills of complaint as the litigants. Indeed, bills were not valid unless signed by counsel or an attorney, a requirement which Jones has dated to the Chancellorship of Thomas More, demonstrating a 'long established indication of responsibility' on the part of legal experts. This insistence can be seen as an attempt to eliminate frivolous and impermissible pleadings.

[33] John F. Fisher, 'Chancery and the Emergence of Standard Written English in the Fifteenth Century', *Speculum: A Journal of Medieval Studies*, vol.52, no.4 (1977), pp.870-99, p.896.
[34] Haskett, 'Country Lawyers?', p.19.
[35] Haskett, 'The Judicial Role of the English Chancery in Late-Medieval Law and Literacy', p.329.

Not only were bills frequently dismissed for lack of signatures, but it was not uncommon for a legal adviser to refuse to sign a bill for fear of punishment from the court. According to Jones, this led to some plaintiffs forging the signature of counsel or simply putting their own signature, in the hope that the court would not notice and allow the suit to continue.[36] Such an increase in the use of legal experts led almost naturally to an increased complexity of the correct manner of submitting bills of complaint. As the solicitor Samuel Turner warned in 1795:

> The Bill may be drawn by the Solicitor; but, as great care and attention is generally required in the framing of a Bill, it is adviseable for the Solicitor to lay proper instructions before his Counsel, who will draw and sign a Draught of it. This saves a great deal of trouble; for, although the Solicitor may have an extensive knowledge of the theory as well as the practice of his profession, yet, if the Bill which he has drawn should be planned improperly, the Counsel will experience equal difficulty in altering and settling, as in drawing the Bill from the beginning.[37]

Witnesses could only be questioned on a matter already specified in either the bill or answer, so careful thought went into their creation. As *The Country-Man's Counsellor* outlined, 'The proceedings are here by English bill, wherein the complainant setteth forth his grievance making use of what suggestions his counsel thinks fit to pump and winnow out the truth from his Adversary; who is bound to answer thereunto strictly in all points upon his Oath, and if he boggle or refuse so to do, must pay cost for insufficient answers'.[38] From the outset of a suit, the parties had to consider what answers they hoped to illicit or supress, meaning bills and answers took an elaborate form.[39] Indeed, there is ample evidence of the court's disdain of over-lengthy pleadings.[40] To use but one example, in 1621, the prominent Jacobean barrister

[36] Jones, *The Elizabethan Court of Chancery*, pp.192-193.
[37] Turner, *Costs and Present Practice of the Court of Chancery*, p.48.
[38] H. R., *The Country-Mans Counsellour*, p.6.
[39] Churches, 'Business at Law, p.952.
[40] Yale has claimed that 'vexatious and prolix pleading was a perennial difficulty to the Chancellors', Heneage Finch, *Manual of Chancery Practice*, p.51.

and Member of Parliament, Sir John Moore, advised the incoming Lord Chancellor, Bishop John Williams, that 'if men do put in answers or bills of extraordinary length above XV sheets the bill and XX sheets the answer, his Lordship mindeth to punish the parties with good costs'.[41] However, J. H. Baker has categorised the documents created in most suits as 'elephantine', as by the eighteenth century, Chancery pleadings had become 'verbose and complex'.[42] It is certainly true that several Chancery bills seem unnecessarily long-winded and repetitive. In one suit taken from my sample, the defendants submitted a demurrer as the plaintiff's original bill included over sixty defendants, running 'above ninety sheets of paper' in length, in which the charges had 'no manner of Relation' to one another.[43]

While the increased activity of legal experts in the composition of bills is unquestioned during this period, there was still an emphasis placed on the importance of the plaintiff being directly involved in the process. P. Tucker has demonstrated how as early as the late fourteenth century, Chancery was accepting bills 'which were sometimes composed and perhaps even written by the plaintiff himself'.[44] Christine Churches has shown how Sir James Lowther, a prominent landowner, industrialist, and Whig politician, was personally involved in the most specific aspects of the legal process and out-of-court tactics relating to Chancery suits. Churches notes that it was Lowther himself 'who revised the attorney's drafts, and supplied his own notes on the case for them to consider'.[45] Further down the social scale, Amy Erickson suggests that the prevalence of conveyancing manuals during the sixteenth century meant that 'even ordinary people in rural areas' managed to secure their own

[41] Ibid, p.80.
[42] Jones, *The Elizabethan Court of Chancery*, p.194; Baker, *An Introduction to English Legal History*, p.121.
[43] TNA, C11/1194/33, 'Nicholls v Gardiner' (1720), Answer Edward Nicholls and 67 others.
[44] P. Tucker, 'The Early History of the Court of Chancery: A Comparative Study', *The English Historical Review*, vol.115, no.463 (2000), pp.791-811, p.791.
[45] Churches, 'Business at Law', p.951, see also Wilfred Prest, 'Lay Legal Knowledge in Early Modern England', in Jonathan A. Bush and Alain Alexandre Wijffels eds., *Learning the Law: Teaching and the Transmission of Law in England, 1150-1900* (London: Hambledon, 1999), pp.303-313.

property transactions in Chancery with legal evidences, demonstrating the striking popular awareness of legal issues throughout England during the period.[46] As such, bills of complaint still exhibited a remarkable individuality of expression, which was relatively unconstrained by the procedure and jurisdiction of Chancery.

Having established the procedure of the court and the process of document creation, it is worth analysing how scholars have approached these documents, and in particular the use of narrative in these documents, in their research. Christine Churches states that Chancery, 'allowed (and even by its form of procedure, encouraged) a much more expansive story-telling to relate how the complainant had become embroiled in the particular dilemma'.[47] Returning to the case study of two prominent merchants outlined in the introduction to the thesis, Churches turns her attention towards dissecting a specific bill of complaint in Chancery, as within this bill,

> a series of three separate tales describe how the various defendants severally owed Thomas Lutwidge large sums of money, which more than cancelled out the amount they were suing him for at common law. Such storytelling tended to rely on a great elaboration of circumstantial detail to provide 'colour' to the plea, and could of course be used to insinuate all sorts of other misdemeanours committed by the other side, and against other parties besides the complainant.[48]

While Churches has incorporated supplementary evidence to give a fuller understanding of the specific business and legal dealings of the Lutwidge family, what is interesting in this account is the way in which Churches describes the narrative constructed within a single written document. Churches claims that while the deeper context is invisible in the bill of complaint, she uses the terms 'stories', 'tales', and 'prevarication' in order to illustrate the fictional nature of the legal claims — or facts — made by parties in a suit. However, referring

[46] Erickson, *Women and Property in Early Modern England*, p.23.
[47] Churches, 'Business at Law', p.944.
[48] Ibid, p.944.

to legal documents as ‘stories’ is not uncommon amongst scholars. Laura Gowing has suggested that narrative in the legal process, and justice in the church courts, depended on ‘story-telling’, a phrase she uses throughout her 1998 publication *Domestic Dangers: Women, Words and Sex in Early Modern London*.[49] Similarly, in a section of a chapter examining the individual agency of married women within the court of Exchequer, entitled ‘Tales of the Exchequer’, Margaret Hunt suggests that despite the high proportion of cases that were dropped after the initiation of a suit, ‘these cases are still recognizable stories’. In this manner, the adversarial character of the court led to individuals presenting moral absolutes, meaning pleadings were ‘manifestly full of lies, omissions, temporal transpositions and eccentric interpretation of events’.[50] Hunt explains that as pleadings were carefully crafted, they present a clear chronological timeline of disputed events, which were organized into a ‘compelling narrative’, displaying a chronologically arranged, and ‘clearly recognizable beginning, middle and end’.[51] We have already seen in the introduction to the thesis the problems surrounding the desire to create some sort of narrative closure within court cases and have a clearly identifiable outcome. However, referring to pleadings as ‘stories’ seems to undermine the factual details provided, presenting the documents as simply fictitious or fanciful accounts. While other scholars are not so explicit in their descriptions, there is still a danger in treating all pleadings as simply constructed to conform to the legal process and help to achieve a desirable outcome.

When discussing marital disputes in the late medieval court of Chancery, Sara Butler makes the obvious claim that it is difficult to know whether the victim truly experienced the level of alleged abuse, and it is ‘all too possible that these bills represent a degree of fiction intended

[49] Laura Gowing, *Domestic Dangers: Women, Words and Sex in Early Modern London* (Oxford: Oxford University Press, 1998), esp. ch.2.
[50] Hunt, ‘Wives and Marital “Rights”’, pp.112-113.
[51] Ibid, p.113.

to gain a sympathetic ear.' However, Butler goes on to suggest that by telling the Chancellor about these events, the petitioner 'strongly believed' they would improve their chances of securing a judgement in their favour.[52] As such, pleadings can therefore take the shape of 'fictional' narratives constructed not only to reflect cultural norms and values, but also to inform historians of instances that their authors hoped would be convincing, or at least believable, to the authority of the court.[53] In relation to marriage disputes, they offer abundant insights into a world the Chancellor — and therefore wider society — was intended to find condemnable, demonstrating the accepted norms of early modern marriage.[54] Merridee Bailey has recently suggested that the mobilisation and use of narrative in Chancery bills can inform us of social, cultural, legal, political, and emotional norms of the period, and the manner in which they were utilised as 'a strategy of persuasiveness'.[55] Similarly, Amanda Capern has utilised Chancery pleadings to discuss the emotions that litigants brought to, experienced, and expressed about Chancery during the sixteenth and seventeenth centuries. Capern states that the link between neighbourly relations and kinship with Chancery was 'dialectical and complex'. As the court made decisions based upon the concept of fairness, it was 'embedded in collective, local consciousness as a space for the articulation of emotions in exchange for redress'.[56] Suggesting that the twinned concepts of trust and honour were invoked to encapsulate a sense of being ill-treated, Capern believes that these concepts became 'legal trope' which were 'placed centrally (in terms of persuasive location) within

[52] Butler, 'The Law as a Weapon in Marital Disputes', pp.291-316.
[53] Natalie Zemon Davis, *Fiction in the Archives: Pardon Tales and Their Tellers in Sixteenth-Century France* (Stanford: Stanford University Press, 1987); Steve Hindle, '"Bleedinge Afreshe"? The Affray and Murder at Nantwich, 19 December 1572', in Angela McShane and Garthine Walker, eds., *The Extraordinary and the Everyday in Early Modern England: Essays in Celebration of the Work of Bernard Capp* (Basingstoke, Hampshire: Palgrave Macmillan, 2010), pp.224-245.
[54] Butler, 'The Law as a Weapon in Marital Disputes', pp.291-316.
[55] Merridee L. Bailey, 'Most Hevynesse and Sorowe', p.28.
[56] Amanda Capern, 'Emotions, Gender Expectations, and the Social Role of Chancery, 1550-1650', in Susan Broomhall ed., *Authority, Gender and Emotions in Late Medieval and Early Modern England* (Basingstoke: Palgrave Macmillan, 2015), pp.187-209, p.188.

Chancery pleadings'.[57] In another article, Capern undertakes a case study of female litigants acting in the capacity of mothers in Chancery, analysing the way in which 'gendered tropes' — such as 'poor mother' — were utilised as maternal narratives in pleadings. As Capern states, her intention is to 'demonstrate how social and legal maternal identities were used to produce strategic storytelling by mothers and their lawyers in rhetoric that they hoped would advantage their cases'.[58] Capern utilises a range of legal formulations — 'legal trope', 'persuasive location', 'strategic storytelling' and 'linguistic construction' — to show that the statements and formulations of the parties within suits were being transformed into legal evidence.

The point to make here, is that by describing pleadings as 'stories' or other such fictional formulations, it moves the focus away from the document under consideration and towards the particular historical discourse under discussion. As explained in the introduction to the thesis, it is not necessary to comment on the truthfulness or factual reliability of the details provided in Chancery pleadings, as we can never ascertain what really happened. But simply suggesting that pleadings can tell us about norms, values, and persuasiveness makes us too far removed from the specific details provided to us in the documents which survive. In relation to the bankruptcy process, these pleadings can actually inform us of particular instances, and specific examples, of how a commission of bankruptcy broke down. A few brief examples from my sample are sufficient to illustrate these points. *Bythell v Keeble* (1699), involved money owed to the bankrupt, John Grosvenor, as well as an intricate family network of indebtedness. The plaintiff, William Bythell of London, suggested that at the time of becoming a bankrupt, several people were indebted to John Grosvenor, a haberdasher of

[57] Ibid, p.191.
[58] Amanda Capern, 'Maternity and Justice in the Early Modern English Court of Chancery', *Journal of British Studies*, vol.58, no.4 (2019), pp.701-716.

hats, for money he had lent to them. For example, on 6 June 1696, Grosvenor lent £100 to Edward Keeble, who in turn assigned a bond to Grosvenor in the penal sum of £200. When the bond came due, and in fear of not receiving payment, Grosvenor had Keeble arrested in order to force repayment. Upon hearing this news, Richard Keeble, the father of Edward, himself became bound for his son's original debt, which allowed more time for his repayment. However, according to the plaintiff, John Grosvenor was unable to carry on trading or keep his shop open and was forced to abscond and conceal himself from his creditors. Fearing the ensuing commission of bankruptcy, Grosvenor directed Richard Keeble to put the bond in the name of John Jenner, who was in 'some way related to the said John Grosvenor', before being finally drawn by Robert Jenner, 'he being the said Grosvenors wifes father'.[59] The change of recipient of the bond was clear evidence to the complainant that Grosvenor was attempting to defraud his creditors and keep the debt away from the commission of bankruptcy. However, in his answer, Richard Keeble gave a dramatically different interpretation of events.

Keeble stated that on 1 December 1696, his son and Johanna Grosvenor, the wife of the bankrupt and Richard's wife's niece, came to him to ask for a loan. Having traded his stock very quickly, Edward Keeble claimed he 'had sold most part of his Goods on Trust to several good and substantial Customers', and needed to borrow £100 over the course of six months, in order to 'keep up his Credit and go on with his Trade'. Johanna Grosvenor claimed that her husband would have lent Edward the money if he could get what was due to him, but failed to mention to Richard that Edward was indebted to her husband. Not having the £100 at hand, Richard suggested that if they could find someone to put out £100 at interest, he would take up the offer and give it to his son. John Jenner offered to lend £100, and so Richard therefore

[59] TNA, C6/378/62, 'Bythell v Keeble' (1699), Bill of Complaint.

explained that he was legitimately bound to Jenner, and not to Grosvenor. However, reflecting upon the course of events, Richard concluded that the signing of the bond was, 'a Trick to get mony of this Defendant without any design of ever paying him again'.[60] On the surface, this seems an extremely complex case. But in reality, the facts of this suit are relatively straightforward: John Jenner was in possession of a bond, which had been assigned by Richard Keeble. Indeed, in common law, this would be a routine case, as the physical bond would stand as evidence of a debt due from one individual to another. Yet, in Chancery, we see the detailed descriptive narrative giving background and context to a simple dispute over a single bond. We could describe either accounts as 'stories' as we can never be certain as to the motivations behind the execution of the bond. There are several other formulations that may be utilised more appropriately — legal rhetoric, argument or formulation — but what is clear is that both the individuality of the bankruptcy process, coupled with Chancery procedure, enabled parties within a suit to provide detailed and intricate backgrounds, presenting a chronological timeline of events to explain — albeit from opposing points of view — how they had become embroiled in such a dispute. It seems clear in *Bythell v Keeble* that the bill of complaint was submitted with the intention to discover the reason and motivation behind the issuing of the bond in an attempt to claim it as a legitimate debt within John Grosvenor's commission of bankruptcy. By focusing on the specific document, and the details contained within, it is possible to understand how individuals within a suit dealt with particular issues and attempted to circumnavigate problems that had arisen in the process.

This approach can be directly applied to illustrate the way in which a commission of bankruptcy had broken down. Returning to Figure 1, numerous examples can be utilised to illustrate the stage at which the ideal, linear path had failed. To choose one from 1698 —

[60] Ibid, Answer of Richard Keeble.

Hammersley v Vanheythuson — the plaintiffs Thomas Hamersley and Henry Caldecott — two linen drapers from London — set out the manner in which Gerrard Lodowick — a linen draper from the parish of St Gyles in the fields, Middlesex — became indebted to them, as well as the path the commission of bankruptcy took. Lodowick, by 'buying and selling' in the trade of a linen draper, became indebted to the complainants and several other creditors for 'great summes of money', although the amount is not specified. Unable to pay his creditors, Lodowick absconded from his 'usual place of abode' on 26 June 1697, and thereby 'became a Bankrupt within the meaning of the several statutes made against Bankrupts'. The complainants, on behalf of themselves and the other creditors of Lodowick, petitioned the Lord Chancellor on 12 January 1697 to execute a commission of bankruptcy. The bill goes on to state that the commissioners found Lodowick a bankrupt 'to all intents and purposes within the meaning of the severall Statutes made concerning Bankrupts', and by an indenture dated 2 February 1697, did 'bargaine sell assigne and sett over' to the complainants all the 'goods and chattels' of Lodowick. The bill then specified several household goods that had been legally assigned to the plaintiffs as assignees, but remained in the hands of the named defendant, Gerard Vanheythuson, a merchant from London.[61] The plaintiffs claimed to have informed the defendant of the ongoing commission of bankruptcy, but the defendant either denied having possession of the goods, or refused to assign them over. Ultimately, the plaintiffs were seeking a discovery of any of the bankrupt's estate that had come into the defendant's possession, and desired the court to assign over any goods for the satisfaction of their debts.

In this bill we can establish the specific timeline the commission of bankruptcy was *expected* to follow. The creditors had established a definitive debt with Lodowick through buying and

[61] TNA, C6/313/16, 'Hamersley v Vanheythuson' (1698), Bill of Complaint.

selling in the linen trade, and Lodowick had unreasonably and illegally avoided and denied payment by absconding from his usual place of abode. As such, the plaintiffs took it upon themselves to petition the Lord Chancellor to execute a commission to examine the circumstances surrounding Lodowick's failure. After examination, the commissioners found Lodowick to have been a bankrupt in the true intent and meaning of the statutes made concerning bankrupts, and so assigned all of his estate over to the plaintiffs as named assignees. It is at this point that the linear timeline breaks, as the assignees accused the defendant of denying them access to Lodowick's estate. However, in his answer, the defendant suggested that the bankrupt owed his uncle, also Gerrard Vanheythuson, £150 17s. 11d. His uncle had since died and, upon proving his will, the defendant, as executor of the will and for further personal debts due from the bankrupt to himself, had received a warrant of attorney from the court of King's Bench. With the aid of the local sheriff, the defendant secured the bankrupt's goods on 28 June 1697.[62] Within this case, we can clearly see that there are several overlapping and competing claims on a single estate. Indeed, the defendant in this case had successfully used an alternative path — the common law court of King's Bench — to satisfy the debts due to his family's estate. Having achieved this two days after the initial act of bankruptcy, we could surmise that those within the bankrupt's trading circle were well aware of his financial situation and sought to recover their debts via alternate means. In terms of Figure 1, the bankruptcy process appears to have gone smoothly until stages four and five, as it was at this point that the assignees had been unable to gain access to all of the bankrupt's estate in order to make sufficient dividends. Indeed, the complainants had initiated the suit solely for the purpose of identifying and discovering which goods belonging to the bankrupt were in possession of the defendant. They were seeking a judgement from the Lord Chancellor to force the defendant to hand over such goods and

[62] Ibid, Answer of Gerard Vanheythuson.

repair the bankruptcy procedure. This would complete the linear recovery process, and the plaintiffs, along with other creditors of the bankrupt, would receive a proportional satisfaction of their just debts. However, when the defendant answered the bill with what appeared to be a legitimate alternative claim on the goods, we begin to see how larger issues surrounding credit, debt recovery, and the wider economy intersect with bankruptcy.

In discussing early modern marriage disputes, Margaret Hunt has suggested that the cases which came before the court were not representative of 'normal' marriage during eighteenth-century England. However, through their careful examination, the modern historian can reveal the 'fault lines' which were central to many more marriages than the ones that ended up in court, demonstrating the manner in which marriage 'should' operate, and the ways in which women defended such ideals in court.[63] Writing in 1941, the legal anthropologists Karl N. Llewetjtren and E. Adamson Hoebel suggested that situations in which a system breaks down often yield the most interesting information about the nature of that system.[64] A similar approach can be taken to Chancery pleadings. As we have already seen, these suits are not representative of bankruptcy procedure, as the vast majority would have been concluded outside of the scope of the court. As such, these suits are exceptional as the very initiation of a bill of complaint demonstrates that at some point within the process, an individual engaged in a commission of bankruptcy had sought redress from the court. However, by analysing these suits in comparison to legal ideals, we can begin to extract the 'fault lines' of the bankruptcy process and establish the specific disparities between these ideals and day-to-day experience.

[63] Hunt, 'Wives and Marital "Rights"', pp.107-129.
[64] Karl N. Llewetjtren and E. Adamson Hoebel, *The Cheyenne Way: Conflict and Case Law in Primitive Jurisprudence* (Norman: University of Oklahoma Press, 1941).

The Practical Implementation of Bankruptcy

Having established the process and procedures that went into creating, utilising, and cataloguing pleadings, our attention can now turn to analysing these suits in greater detail. This section will discuss the manner in which legal provisions and regulations were being implemented, illuminating specific disparities between legal ideals and the practical realities of day-to-day experience. *Garrett v Blackerby* (1692), is a case which highlights several of these disparities clearly. The plaintiff Nicholas Garrett, a weaver from Middlesex, was a creditor of the bankrupt John Barrington, a mercer from London. In his bill, Garrett complained that dividends from the commission of bankruptcy had been distributed unfairly, with other creditors receiving more than himself. Garrett goes on to accuse the defendants of threatening him, by claiming he would not receive a 'groat of my debts' if he pursued a suit at law.[65] While in theory official bankruptcy procedure provided greater authority and certainty by placing all creditors on an equal footing, this is clearly not the case in this suit, as Garrett shows his perceived fear of receiving less than the other creditors, taking direct aim at the distributions made under the ongoing commission of bankruptcy. We also see the insinuation that he was coerced into acting in accordance with the other creditors' wishes. While three defendants vehemently denied they threatened the plaintiff, they clearly establish that a form of discharge was being employed prior to 1706, demonstrating an inventive way of enabling a portion of the bankrupt's estate back to his family for subsistence. It was agreed by 'most' of the above one hundred creditors that if Barrington appeared before the commissioners to be examined, and delivered up his whole estate, then some person would be admitted 'as a creditor for six hundred pounds in trust for the Wife and children of the said

[65] TNA, C6/416/14, 'Garrett v Blackerby' (1692), Bill of Complaint.

Barrington'. Having met all the creditors' demands — and even sending his wife and servants to be examined — the creditors allowed Nicholas Martin to come in as a creditor for £600, further agreeing not to sue or prosecute Barrington for debt for the term of sixty years.[66]

No further information is provided about Nicholas Martin and he is not named as a party in the suit. However, it can be assumed that he was not an original creditor of the bankrupt, as he was not involved in the original commission of bankruptcy. It seems that Martin was simply an acquaintance of the creditors — and possibly the bankrupt — who was used as a tool in order to provide a significant level of subsistence back to the bankrupt and his family. Indeed, while the overall debt of Barrington is not disclosed, it must have been a substantial amount in order to allow a subsistence of £600, a sum that was three times the statutory limit prescribed in 1706. Without a specific legal stipulation in place to allow the commission to return a subsistence directly to the bankrupt himself, the creditors manipulated the law in order to provide for the bankrupt's family. With limited information, it is difficult to comment on the motivation behind this seeming act of charity. If the plaintiff is to be believed, then it appears that the creditors had acted fraudulently by returning a disproportionate amount back to the bankrupt, at the expense of Garrett. If on the other hand, the defendants are to be believed, then the return of the £600 could be seen as an act of charity and kindness, by ensuring that the bankrupt's family were cared for. One final, and perhaps the most realistic option, is that this act could be seen as an attempt to incentivise cooperation, by insisting that if the bankrupt acted honestly, then his reward would be an informal form of discharge, and the return of a proportion of his estate. As such, and returning to the argument of Kadens that the 1706 act was the first time such incentivisation

[66] Ibid, Answer of Samuel Bayley, Edmund Bayley and Nicholas Baker.

was made explicit in the statutes, it is clear that creditors were undertaking this tactic in an informal manner prior to this date.

Further cases can be used to illustrate these issues. *Mill v Sedgwick* (1693) is a relatively rare example of a declared bankrupt, Adiel Mill, appearing as a plaintiff. In the bill of complaint, Mill explained that his creditors caused all of his 'goods, Stock, Bookes, Paper and other estate to bee seized and sold by the said Commissioners and disposed off as they pleased'. However, Mill claimed that 'in Compassion' for himself, his wife, and seven children, his household goods were appraised, and £1000 was assigned to Mill, 'the better to Enable your Orator to provide a maintenance for himselfe and family'.[67] The answer of William and Susan Sedgwick, creditors of Mill, corroborates Mill's version of events. However, the couple stated that they refused their portion of payment, as Mill had not acted honestly and provided a true account of his debts.[68] Despite not receiving the full amount, it appears that in this case the creditors and the bankrupt had, in principle at least, agreed to a substantial maintenance for Mill's family, at least part of which had been paid. This suit can again be seen as an attempt at incentivised cooperation, as the bankrupt and his family were given the opportunity to receive a substantial financial settlement if Mill truthfully revealed his total assets. However, there is also evidence of coercion and a form of informal punishment for failure to comply, as the defendants claimed to have refused Mill their share of his subsistence as he was said to have acted dishonestly.

Perhaps the most obvious example of incentivised cooperation can be seen in a complex case from 1698, in which Mary Herbert, a widow and sole heir to her father's estate, was the only plaintiff. After a disagreement between Mary's father, Roland Hunt, and her husband,

[67] TNA, C6/327/24, 'Mill v Sedgwick' (1693), Bill of Complaint.
[68] Ibid, Answer of William Sedgwick and Susan Sedgwick.

Edward Herbert, her father had left three bonds totalling £3000 in the hands of his brother, Thomas Hunt, to be invested for the benefit of Mary and her two children. However, Thomas became bankrupt and there arose several competing claims on the bonds in his possession. From Thomas' answer, we again see an agreement had been reached between himself and his creditors regarding his liberty and subsistence. In this instance, as the bankrupt's estate was worth more than his debts, and being thankful of his candour, his creditors were willing to grant the bankrupt his liberty for ninety-nine years. Furthermore, in order to support his family, the creditors were willing to pay the sum of £5 out of every £100 received, raising to £7 10s. out of every £100 received, once £10,000 had been distributed amongst his creditors. This incremental rise in payment to the bankrupt can only be viewed as a means to encourage truthful cooperation from Thomas Hunt. Within these suits, we see explicit references to the 'maintenance' and 'trust' of the bankrupt's family, which creditors did through 'compassion' and consideration. Yet, at the same time, we also see various forms of informal coercion and punishment levelled against individuals who acted in a seemingly inappropriate manner. As such, we see a pragmatic approach to debt recovery, as the creditors had clearly come to the realisation that rather than punishing the debtor for non-payment, it was in everyone's best interest to gain full cooperation from parties within the process. While it could be argued that such creditors were simply acting in a compassionate, kind, and thoughtful manner towards their fellow traders, these suits demonstrate that pragmatism was the reason behind these approaches. Refusing a portion of subsistence for non-compliance with the creditors' stipulations, and offering an incremental return dependent on the amount the creditors received, illustrates that it was an early form of incentivised cooperation being implemented, rather than a compassionate payment.

We have previously seen how bills of complaint needed to be formulated to demonstrate that defendants had acted against conscience, while sworn answers needed to refute these claims

by showing that the defendants had acted reasonably. As such, we can see how the language utilised in these suits were attempting to conform to these ideals and add weight to legal arguments. Yet, while we can interpret these statements as persuasive arguments demonstrating acceptable norms and values of the period, these cases can actually inform us of practical issues and procedures occurring in the debt-recovery process. Returning to Thomas Hunt, when discussing the legal validity of his agreement, the bankrupt stated that he 'Humbly presumes he hath a legall right to his Liberty and the allowance given him by the said Creditors'.[69] This statement suggests that such a practice was commonplace and a familiar occurrence in bankruptcy procedure. Indeed, while there are clearly several issues surrounding the bankruptcy process in these three suits which need to be resolved, it is important to note that at no point are these informal agreements — to provide a subsistence and to discharge a bankrupt from future liabilities — debated as a matter of fact. All parties questioned on these issues acknowledged that such agreements had been reached, demonstrating an implied understanding that they were legally valid. Returning to John C. McCoid II's work on discharge, the author concludes that early modern practitioners did not see the provision as momentous as legal historians have, as it continued quite naturally from steps already taken. Indeed, as a rule of law, discharge had existed 'as early as the middle of the seventeenth century'.[70] It seems that not only were legal provisions in the 1706 act previously present as a rule of law, but there were instances of this being the case within the bankruptcy process itself. These suits provide a glimpse into ongoing negotiations between debtors and creditors, as it seems that creditors were willing to treat debtors amicably, allowing them the chance to provide for their family, while simultaneously encouraging truthful cooperation, and punishing fraudulent activity.

[69] TNA, C6/361/42, 'Herbert v Herbert' (1698), Answer of Thomas Hunt.
[70] McCoid II, 'Discharge: The Most Important Development in Bankruptcy History', p.182.

As well as issues surrounding the provisions entered in the 1706 statute, several cases demonstrate further disparities between the ideal pathway of bankruptcy procedure and the realities of its implementation. In a suit from 1715, the plaintiff and assignee of Daniel Browne, an apothecary from Worcester, sought to revive a bill he entered three years previously. The plaintiff claimed that the bankrupt had accumulated debts in excess of £600, but he himself had been unable to assess and regain anywhere near that amount. As such, the plaintiff was seeking a discovery of any goods or estate that had come into the hands of the eleven named defendants.[71] In two of the three answers that survive, the defendants explained that the reason the plaintiff was unable to identify and recover such a large amount was because the bankrupt did not owe more than £200 to his various creditors. A defendant named Henry Blake claimed he was not aware of the commission as he was never summoned to a meeting of the creditors, despite being the largest creditor for a total debt of £138 12s. However, Blake estimated the debts owing to the creditors within the commission to be £136, and therefore, Browne should never have been declared a bankrupt, as he had not reached the £200 threshold.[72] In this instance, the defendants were questioning the decision made by the commissioners, as they suggested that Browne had not satisfied the statutory legal criteria. As we have previously seen, while commissioners held a jurisdiction over the commission of bankruptcy, several suits were initiated with the direct intent of altering its trajectory.

Three further cases survive whereby the bankrupt submitted a bill complaining about an open and ongoing commission to which he was engaged. In *Ellis v Winnock* (1690), the only document that survives is the demurrer of two defendants, Samuel Winnock and John Lewis. From this response, it appears that the bankrupt had submitted a bill demanding the creditors prove the veracity of their claims. The defendants concluded that the only reason the bill was

[71] TNA, C11/1790/18, 'Riley v Browne', (1715), Bill of Complaint and Bill of Revivor.
[72] Ibid, Answer of John Yarnold and Elizabeth Yarnold; Answer of Henry Blake.

exhibited was to put them to 'wrongfull vexation and Charge and Cost and Expences in law', as the bill contained 'nothing but what relates to and falls under the power of the Commissions of Bankrupt'.[73] In a similar case from 1700, the five named defendants did submit an answer, but it was short and to the point. They explained that as the commission of bankruptcy was still in force and had not been superseded, 'the Complainant is not entitled to exhibit or proceed upon his Bill in this High and Honourable Court nor to have any further or other Answere thereto'.[74] While the power and authority of commissioners is discussed in chapter four, these suits are extreme examples, as the audacity of the actions of the bankrupts are apparent to the modern reader. It appears that the motivation behind these suits is an attempt to delay, disrupt or increase the costs to the defendants. What is clear, is that the defendants demonstrated a clear legal understanding of the correct route and jurisdiction of bankruptcy procedure and utilised this to strengthen their argument.

In *Paradice v Peach* (1745), the plaintiffs were creditors of the bankrupt, while the two assignees were named defendants. In his answer, Thomas Carpenter from Gloucester, suggested he was 'much Surprized' at the plaintiffs in submitting a bill to discover the estate and effects of the bankrupt that had come into his possession. Put simply, the defendant felt that all creditors should have taken the 'ordinary Course prescribed by the Laws of Bankruptcy', namely a commission of bankruptcy. Indeed, from the time he had been made assignee, he had always been 'ready and willing' to account with the commissioners, 'as the Laws of Bankrupcy Direct'. Carpenter claimed that he took great pride in his work, all of which had been correctly done 'within the Time prescribed by Law for that Purpose and always was and is desirous to do in all Things according to the Duty of his said Trust'.

[73] TNA, C6/407/28, 'Ellis v Winnock' (1690), Demurrer of Samuel Winnock and John Lewis.
[74] TNA, C6/365/48, 'Airey v Forster' (1700), Answer of Rebecca Richardson, John Foster, George Usher, William Wilkinson and Susannah Punshoon.

Carpenter concluded that he was not aware of any mismanagement, confederacy or concealment amongst the individuals operating the commission of bankruptcy, and that the plaintiffs were premature in submitting their bill, as all time and expense could have been spared.[75] As we have seen, the success of these commissions was largely dependent on the work and cooperation of all those involved in the procedure. As such, it is not surprising that several suits took direct aim at the individuals granted authority to pursue such actions.

The final example of a bankrupt initiating a bill of complaint can be found in *Bowlby v Fitzhertbert* (1705), whereby Thomas Bowlby took direct aim at the actions of the commissioners. The two answers that survive are both from commissioners who, residing in Nottingham, would have been assigned the role by the Lord Chancellor. Richard Burbidge suggested that the creditors of the bankrupt employed an attorney named Nathaniel Bate from Mansfield to sue forth the commission of bankruptcy. Burbidge was displeased with Bate for assigning him the role without asking him in advance, as Burbidge saw himself as 'not very well skilled in affairs of that nature'.[76] The other commissioner, John Fitzhertbert, tells a similar story, whereby he was 'very uneasey and much displeased with the said Bate' for executing the commission, and not 'informeinge this Defendant or takeinge his consent' beforehand. Fitzhertbert stated he was in 'A greate measure unacquainted with the methods of proceedinge', and as such refused the role several times. He finally yielded and accepted the position, seeing it as his 'neighbourly duty' to help the plaintiff. However, since being drawn into this 'Unreasonable and Vexatious Suite', both defendants demanded the sum of 20s. per day, for their 'paines and trouble in attending the execucion of the said Commission Ten days', which was seen to be 'the Usuall and accustomed Fee Gratuity in Cases of the like

[75] TNA, C11/1609/14, 'Paradice v Peach' (1745), Answer of Thomas Carpenter.
[76] TNA, C6/378/47, 'Bowlby v Fitzhertbert' (1705), Answer of Richard Burbidge.

nature'.[77] In contrast to the examples utilised above which demonstrate an intricate awareness of bankruptcy legislation and procedure, in this suit the two commissioners were reluctant to take on the responsibility, being wholly ignorant of the correct method in which to execute their roles. Through a combination of coercion and civic duty they undertook the position, but both concluded they were due financial recompense for their time and effort.

In further examples, while we do not gain as much detail, we still see members of the public rejecting the position, or being removed or replaced once in power. In *Sole v Arnold* (1735), the plaintiffs were the two assignees of William Tappenden, a chapman from Kent. The bill suggested that after a commission of bankruptcy had been initiated on 2 May 1734, two original assignees were chosen but rejected the position. Pursuant to an order from the Lord Chancellor, dated 17 September 1734, the creditors were forced to meet again and named the current plaintiffs assignees.[78] In a strange case from 1730, William Jones was named an assignee after a commission of bankruptcy had been executed on 22 August 1722. When Jones subsequently died, his daughter and executrix Mary became an assignee in December 1723. However, by an order of the Lord Chancellor dated 16 March 1724, Mary Jones was 'discharged from acting as assignee', and in October 1730 a new commission of bankruptcy was executed. After a meeting at Guildhall the following November, the plaintiff was finally chosen as an assignee and the commission was allowed to continue.[79] In this final case we get a clear example of the Lord Chancellor's jurisdiction over bankruptcy, as the original commission was superseded, Mary Jones was relieved of her duty, and a new commission executed. But further to this, while a clear understanding of legal jurisdiction and procedure have been utilised to add weight to the arguments of parties within a suit, in these instances

[77] Ibid, Answer of John Fitzhertbert.
[78] TNA, C11/1523/19, 'Sole V Arnold' (1735), Bill of Complaint.
[79] TNA, C11/2426/38, 'Smith v Platt' (1730), Bill of Complaint.

we also see ignorance fulfilling a similar role. In this manner, it becomes clear that parties were manipulating the legal process by demonstrating an astute awareness of the law when it suited them, while claiming ignorance of the law in other circumstances.

In *Browne v Bamforth* (1696), the plaintiffs filed a cross bill against George Bamforth, an assignee of Thomas Eyre. Being executors of another assignee of the bankrupt Cuthbert Browne, the plaintiffs claimed to have been unable to come to an account with Bamforth, despite him receiving over £5000 of the bankrupt's goods and estate over the course of seven years.[80] In his answer, George Bamforth explained that during this period, he had paid £1401 8s. 6d. to creditors, and had no estate left in his possession. Bamforth claimed that Eyre owed over twenty two people above £6000, and in a long and protracted affair, the creditors were 'very well satisfied with this Defendants proceedings as he verily believes and that he shall be ready to account with them when he hath recovered what is due to them from the Complainants'.[81] Although not within this sample, it is clear that in Bamforth's original bill he was seeking repayment for any estate that had come into the hands of Cuthbert Browne. While there are competing views and interpretations of the accounts of the assignees, Bamforth cites the creditors' satisfaction with his work as evidence of his claim. Finally, perhaps the rarest example of the failure of the bankruptcy process can be seen in *Jacobs v Sheppard* (1720). The plaintiffs exhibited their bill in February 1719, hoping to revive a bill from 1711 in order to seek a discovery of the bankrupt's estate, which had still not been identified. In response, the defendants suggested that the estate under question was more than sufficient to satisfy the complainant's demands, and so the original suit should be revived. Ultimately, this is a rare example of the plaintiff and defendant both agreeing – not only that

[80] TNA, C6/381/15, 'Browne v Bamforth' (1696), Bill of Complaint.
[81] 'TNA, C11/1790/18, 'Riley v Browne', (1715), Answer of George Bamforth.

the bankruptcy process had failed, but also on the manner in which all parties should proceed.[82]

Conclusion

As the first chapter, it is worth commenting on the methodology that will be employed throughout the thesis. What is clear, is that we do not know how many of these suits progressed beyond the initial stage of proceeding, and if they did, the form this took within the court. It is likely that the vast majority were withdrawn or compromised at this early stage. However, by analysing pleadings in isolation, it not only allows a greater quantity of cases to be utilised, but also enables a fuller discussion of how bankruptcy reveals itself at this stage of a proceeding. The picture we get is not one of a sole trader collapsing, or even of a single issue to be decided by the court, but rather of larger interconnected and overlapping principles of debt recovery intersecting with the bankruptcy process. It is only possible to understand such complexities by paying close attention to the documents presented to the court at this stage of proceeding, and analysing a larger quantity of cases. The specific details concerning the manner in which bankruptcy procedure was litigated in Chancery could have been missed, or at the very least misunderstood, if only a limited number of suits were analysed. When discussing the *ratio decidendi*, or the rule of law on which a judicial decision is based, Eileen O'Sullivan has shown how such processes are rarely straightforward and linear. For O'Sullivan, the non-linearity of the decision-making process, 'is evident when decisions produced by courts come to different conclusions, or when they come to the same

[82] TNA, C11/2370/46, 'Jacobs v Sheppard' (1720), Bill of Complaint, Answer of Mary Sheppard, Francis Sheppard and Samuel Sheppard.

conclusions but for different reasons'.[83] A similar point can be made about bankruptcy pleadings, as these suits are not about straightforward and linear debt recovery. Indeed, Kadens has shown how default itself was not a binary concept, and there arose a spectrum of repayment from outright failure to repayment in full.[84] As an ideal, bankruptcy procedure had many advantages over alternative routes available to creditors, but in reality, the process encountered various problems and obstacles which needed assistance from the court in order to be completed. Multiple external pressures were placed on commissions of bankruptcy and pleadings demonstrate individual breaks in the ideal, linear timeline of debt recovery established in the legal statutes and contemporary commentary.

Taken in isolation, the types of documents found in pleadings grant us insights into the way individuals dealt with specific issues and managed to circumnavigate problems within a commission of bankruptcy. Collectively, they demonstrate that the ideals established in the statutes did not always conform neatly to the practical realities of procedure. Indeed, it seems that both creditors and debtors held a keen understanding of established legal principles and knew how to manipulate the process for their own benefit. This manipulation took a variety of forms, ranging from individuals demonstrating an acute awareness and understanding of precise legal principles, to others demonstrating complete ignorance of the most basic concepts of trade. Undoubtedly, the cases utilised above can inform us of many aspects of early modern society. They could, for example, shed light on issues surrounding attitudes towards destitution, Christian and community standards of charity, support networks for families, the poor laws, and several other interrelated topics. But in relation to the bankruptcy process, one aspect of change has been overlooked by scholars. The 1706 act continues to

[83] Eileen M. O'Sullivan, 'Law and Chaos: Legal Argument as a Non-Linear Process', in Andrew Lewis and Michael Lobban eds., *Law and History* (Oxford: Oxford University Press, 2004), pp.433-452, p.433.
[84] Emily Kadens, 'Pre-Modern Credit Networks and the Limits of Reputation', *Iowa Law Review*, vol.100, no.6 (2015), pp.2429-2507.

hold historical and academic interest, as it is viewed as a monumental change in the laws of England which had a long-lasting effect on insolvency and bankruptcy laws in many Western states. While the motivations and reasons for the introduction of this statute continue to be debated, the two central provisions of 1706 — providing a discharge from future liabilities and allowing a subsistence back to the bankrupt — were clearly being practised prior to this date. In many respects, the introduction of the 1706 act can be seen as a means for the law to catch up with the practical realities of debt recovery. Furthermore, while the 1706 act formalised incentivised cooperation, as well as legal coercion and punishment for failure to comply, these concepts can be seen as the key motivations behind the informal practice outlined above. As such, this can be viewed as the law actually altering the practicality of procedure, as it regulated informal processes, placing statutory defined limits upon their implementation.

The diversity and individuality of cases is shown through colourful and distinctive narratives, allowing access to the specificities of the details of these disparities. As such, we can analyse the ongoing complaints towards, and attempted repair of, this form of debt recovery. Notably, several creditors undertook a pragmatic approach to bankruptcy, attempting to incentivise cooperation for the benefit of all parties within the process. Ultimately, the specificities of such discrepancies have been overlooked in the historiography of bankruptcy and bankruptcy procedure and add another layer of complexity to the reasons why the legislature acted to regulate the debt-recovery process.

Chapter Two: Knowledge and Circulating Judgements of Failure in Bankruptcy Pleadings

Introduction

Discussing trust and credibility in the early modern economy, both Alexandra Shepard and Craig Muldrew begin sections of their work by referencing Thomas Hobbes. Shepard begins her 2015 publication, *Accounting For Oneself: Worth, Status, and the Social Order in Early Modern England*, with the following epigraph: 'For let a man (as most men do,) rate themselves at the highest Value they can; yet their true Value is no more than it is esteemed by others'.[1] Similarly, Muldrew begins a chapter in *The Economy of Obligation: The Culture of Credit and Social Relations in Early Modern England* (1991) with a similar extract: 'The Value, or WORTH of a man, is as of all other things, his Price; that is to say, so much as would be given for the use of his Power: and therefore is not absolute; but a thing dependent on the need and judgement of another'.[2] Both scholars utilise Hobbes in this manner to demonstrate how social estimation was dependent upon the observations of wider society. While Muldrew focuses on the degree of trust in communities which formed a 'culture of credit', Shepard explores the language of self-description in relation to the 'worth' of an individual, which led to a 'culture of appraisal'.[3] In contrast, this chapter analyses the narrative in pleadings surrounding a dynamic series of events which led to an individual failure. In this manner, it is possible to see how those involved in the bankruptcy process began to judge the demise of an individual which led to a commission of bankruptcy.

[1] Thomas Hobbes, *Leviathan*, edited by Richard Tusk (Cambridge, 1991), p.63; Shepard, *Accounting For Oneself*, p.1.
[2] Ibid, pp.150-153; Muldrew, *The Economy of Obligation*, p.148.
[3] Muldrew, *The Economy of Obligation*, pp.148-150; Shepard, *Accounting For Oneself*, p.28.

Shepard has suggested that entering the late seventeenth century, interpersonal credit was becoming less stable and increasingly difficult to quantify and judge. One aspect of this assessment is that Shepard analyses witness statements in the present tense, as it was 'the goods and chattels *in people's possession*', which determined status and social position within the community.[4] We have already seen how the types of credit networks litigated in Chancery differed dramatically from those explored by Muldrew and Shepard, as they involved vast amounts of debt, were multifaceted in nature, and were restricted to traders and merchants. However, the complex nature of bankruptcy suits is further highlighted when we analyse the way in which individuals sought to clarify the failure of an individual involved in the process. This chapter analyses the flow of information, and the transfer of knowledge, throughout the trading community in terms of circulating judgements about individual bankrupts. While pleadings were submitted in the present tense in an attempt to secure an immediate judgement from the court, those involved in the bankruptcy process sought to look back and quantify the timing of certain actions as they related to a commission of bankruptcy. Similarly, a central feature of the narrative presented in pleadings was the degree of risk, investment, and potential return involved in future dealings. As such, bankruptcy can inform us of multiple aspects of the temporality of trade, as well as certain social features of failure, as individuals sought to assess the actions — both in the past, and opportunities in the future — of those involved in debt recovery. Ultimately, the complexities of bankruptcy procedure unsettled the ability to formulate clear judgements about individual failures.

This chapter is divided into two broad sections. The first section explores how the law and legal advice manuals sought to clarify the timing of bankruptcy procedure, and in particular, the exact moment a debtor could be declared a bankrupt. As we have seen in the previous

[4] Shepard, *Accounting For Oneself*, p.1, my italics.

chapter, there were often disparities between the legal ideals and the practical realities of experience, and the timing of bankruptcy was no different. The second, and much larger section, pays closer attention to the cases themselves, and is itself further broken down into four manageable parts. Part one explores the specific details of these disparities by analysing certain ambiguities that arose regarding the timing of failure. Particular attention is paid to the public nature of a commission of bankruptcy and the degree to which this information was widely and commonly disseminated. The second part builds upon this notion of public knowledge and circulating judgements by analysing how particular decisions within the bankruptcy process could impact future outcomes, such as the level of dividends to be paid. As such, the future, as well as the past, is analysed in terms of certain social aspects of trade. The chapter then moves on to assess how individuals interpreted the specific acts or actions of both creditors and debtors. Part three discusses the distinctions made between acts and actors, as well as between genuine and fraudulent debts. These distinctions are then built upon in the final part of the chapter, as we see how acting in a public manner, and trading within certain times, was seen to be acting honourably and in a trustworthy manner, while undertaking tasks in a secret and clandestine way was seen to be fraudulent and dishonest.

The Law and the Timing of Bankruptcy

One important aspect of the operation of bankruptcy was the exact moment in which a debtor committed an act of bankruptcy. It was the bankruptcy commissioners who were tasked with looking back and trying to ascertain if, and when, a debtor committed such an act. It was from this point of committing the illegal act that the debtor was considered a bankrupt, and as a legal principle, any credit, debts or estate of the bankrupt were to be encompassed within the commission from that moment onwards. However, bankruptcy statutes and advice

manuals were particularly vague on the specificities of these issues, leaving the exact moment of bankruptcy open to interpretation. In Thomas Goodinge's view, it appears that the precise timing of bankruptcy seemed unimportant:

> If the Petition (which is to set forth the Time when he became a Bankrupt) do shew, that he was a Bankrupt the *1st* of *June* … and the Commissioners find that he became a Bankrupt the *1st* of *November* following, yet it's well enough, for it sufficeth that he is a Bankrupt, and the Time is not material, so it be before the Date and suing forth the Commission.[5]

Within this explanation, Goodinge explains that 'the Time is not material', as long as it occurred *before* a commission of bankruptcy was executed. As a practical advice manual, Goodinge was simply explaining to creditors that the act of bankruptcy had to have occurred prior to their petition to the Lord Chancellor to begin bankruptcy proceedings. If this was the case, then the commission of bankruptcy was legally valid. However, when discussing the decisions of the commissioners themselves, Goodinge explained that they were generally cautious in declaring the bankruptcy from a specific time or date, 'but leave it to a Trial at Law, in Case there be any Question or Doubt of it; and this for their own Security against Actions that may be brought against them'.[6] We have previously seen how any question of fact was to be tried before a jury in the common law courts.[7] This is especially true regarding the timing of the act of bankruptcy. Yet, Goodinge is further suggesting that commissioners were intentionally vague in order to protect themselves against suits being taken out against them personally. This led to a situation whereby the legal advice, and the work of the commissioners, resulted in uncertainty surrounding the date of an act of bankruptcy, and therefore when the bankruptcy had first begun. While the specific time of the act of bankruptcy was unimportant in the eyes of law, it was of crucial importance to creditors and

[5] Goodinge, *The Law Against Bankrupts*, p.4.
[6] Ibid, p.48.
[7] See James Oldham, *English Common Law in the Age of Mansfield* (Chapel Hill: University of North Carolina Press, 2004), p.107

the bankrupt, as it determined which debts and individual actions were legally valid. For example, discussing the conveyance of goods in relation to the timing of bankruptcy, Goodinge stated that anything executed 'after the Time of Bankrupcy, is totally void'.[8] Put simply, after an act of bankruptcy, the debtor had no control over their actions, as every credit and debt, as well as the entirety of their estate, was to be encompassed within the authority of the commission.

As well as the exact timing of failure, several other issues arose surrounding an act of bankruptcy. One such example concerned the public nature — and whether traders took 'notice' — of the act of bankruptcy and the subsequent commission. In Thomas Davies' advice manual, entitled *The Laws Relating to Bankrupts* (1744), the author grappled with the public nature of commissions in relation to acts of bankruptcy: 'for a *Commission is a publick Act, of which all are bound to take Notice*; but an Act of Bankruptcy may be so secret as to be impossible to be known'.[9] An act of bankruptcy could consist of a trader concealing themselves in their house for as little as an hour, in order to delay or defraud their creditors. Even if their other correspondents were not aware of such action, Davies established 'that in Law, as well as Philosophy, *De non entibus & non apparentibus eadem est ratio*' [concerning things which are not apparent, the rule is the same].[10] This legal position created obvious problems for tradesmen dealing with debtors who were subsequently declared a bankrupt by commissioners. Davies references a case litigated in King's Bench entitled '*Hill and others* against *Shish*' (1728-1729), in order to give a more nuanced understanding of the debates surrounding this legal principle. In this suit, the eminent lawyer Sir Bartholomew Shower argued that if a man be arrested for a just debt of £100, and shall not pay or compound with

[8] Ibid, pp.28-29.
[9] Davies, *The Laws Relating to Bankrupts*, p.420.
[10] Ibid, p.118.

his creditors for six months, then he should be considered a bankrupt from the time of the first arrest. In setting out possible objections to this position, Shower suggested that if such a construction was allowed then the inconvenience to other traders would be great:

> Because, if a trading Person be arrested, and bailed, and a third person knowing nothing of it intrusts him, or deals with him, that if such Person should be a Bankrupt from the first Arrest, that then every Person so dealing with him, would be forced to return the Goods, and yet lose the Money he paid for them; which they say would be so great a Mischief, that it would discourage Trade.[11]

Answering his own objections, Shower believed that no debtor would be endangered for a payment to the bankrupt before such time as he shall 'know that he is become a Bankrupt'. While an arrest in itself could not cause a man to be bankrupt — as it was not an offence to be in debt — in this suit, Lord Chief Justice Wright stated that the debtor could be considered a bankrupt at the point of rendering himself in discharge of his bail.[12] More broadly, a debtor could be considered a bankrupt if he failed to pay, or attempted to compound for, a debt of £100 or more six months after it was due, or six months after a writ to recover debt had been executed. While Shower believed that the laws were favourably created — and should therefore be favourably interpreted — for the benefit of the creditors, this position is paradoxical in nature, as an act of bankruptcy was a private act, but the bankruptcy must have been publicly known to the trading community.[13]

It is worth pausing on this analysis for a moment, as while this was a summary of a case litigated in a common law court, it sets out the absurdity of a point of law relating to bankruptcy. This meant that there were situations whereby a debtor could have carried on his trade openly and in public, while all the time being technically declared a bankrupt. During

[11] Ibid, pp.116-118.
[12] Ibid, pp.116-117.
[13] Ibid, pp.116-117; Jones, 'The Foundations of English Bankruptcy', p.25.

this period, it became established that a commission had to be executed within five years of a debtor committing an act of bankruptcy. Although, as the statutes were intended to be interpreted for the benefit of the creditors, there were examples where this had been extended.[14] But as Goodinge suggested, 'it's without Doubt the sooner the better for the Creditors'.[15] This allowed for a remarkably large window between the initial act and the petition of the creditors. As we have seen, as long as the act occurred before the petition to the Lord Chancellor, then it had met the requirements of the law. However, as the range of circumstances which the law specified could include extremely private acts, conducted in front of a limited number of individuals, then the question arose regarding how the remainder of the bankrupt's trading partners were expected to know about such a failure. In theory, this led to a position, and a moment in time after the act of bankruptcy, whereby a debtor was simultaneously a bankrupt, and not a bankrupt, depending on whether a commission of bankruptcy was ever taken out. Lord Chancellor Nottingham sought to clarify this absurdity in 1681, decreeing that '*the Law was hard against Tradesmen that dealt with Bankrupts before Notice*; and the Assignees ought not to be assisted in Equity in any such case'.[16]

What is crucial in this analysis, is that the law had established that a simple act of bankruptcy could make a trader a bankrupt, while simultaneously acknowledging that tradesmen must have had 'notice' of such an act. As Goodinge concluded, any transaction completed by a debtor before he became a bankrupt 'is Without Question good; and so are all the Acts he doth before he comes *to appear to be a Bankrupt*'.[17] This legal positioning raised serious questions about how those within the trading community resolved such a paradox and judged an insolvent debtor to be a bankrupt prior to a declaration by commissioners. A similar point

[14] Davies, *The Laws Relating to Bankrupts,* pp.35-38; William Jones claims that 5 years was seen as the 'yardstick', Jones, 'The Foundations of English Bankruptcy', pp.31-32.
[15] Goodinge, *The Law Against Bankrupts*, p.35.
[16] Davies, *The Laws Relating to Bankrupts*, p.410.
[17] Goodinge, *The Law Against Bankrupts*, pp.94-95, my italics.

can be made about commissions themselves, as a commission of bankruptcy was seen as a 'matter of record', meaning it was the responsibility of the trading community to take notice of the proceedings. Further to placing a notice in the *London Gazette* when a commission had been executed, it was not uncommon for notices to be placed at Guildhall, the Exchange or other 'such publick Places'.[18] A creditor who did not join in the commission was seen to have voluntarily declined to do so — as they had not taken notice — and subsequently forfeited their claim to the bankrupt's estate.[19] However, the extent to which commissions were known to the public is unclear. As one anonymous tract stated, an advertisement in the *Gazette* was an insufficient notice to creditors, who may have 'no Suspicion of a Commission … for the Man has been really broke perhaps so long, as to be forgot'.[20] This suggests that the prospect of executing a commission against debtors who had been insolvent for an extended period was uncommon, and it was unrealistic for creditors to continually take notice of public advertisements and declarations.

Returning to specific acts, one final point to make is that intent was of crucial importance when it came to clarifying acts of bankruptcy. Thomas Davies used the case of William Gulston to illustrate how the act of bankruptcy must have been done with the purpose or intent to defraud the debtor's creditors. Gulston was a trader in wine, but also had dealings in several plantations in Barbados, making multiple trips abroad between 1725 and 1737. On 19 March 1737, he made one such trip with his wife and children, informing his creditors he would return within 18 months. Instead of returning, he stayed in Barbados until 1742, making remittances to some creditors in England at the expense of others. A commission of bankruptcy was executed against Gulston on 16 February 1642 by George Dale, to whom he

[18] Ibid, p.44.
[19] Jones, 'The Foundations of English Bankruptcy', p.34.
[20] Anon, *Considerations Upon Commissions of Bankrupts*, p.15.

owed over £4000. Gulston initiated a suit in Chancery, questioning the validity of the commission, as he claimed never to have committed an act of bankruptcy. On 13 December 1743, The Lord Chancellor referred the case to a trial in King's Bench, and the question posed to the jury was whether travelling to Barbados was an act of bankruptcy. Gulston claimed that he had left England with the 'Consent of his Creditors' and had traded since he left to the amount of 'several Thousand Pounds'.[21] According to Davies, both sides called several witnesses to prove their case, but what is crucial for our understanding, is that Lord Chief Justice Lee summarised to the jury that the matter to be decided on, was whether Gulston's 'going abroad, was with an Intention to defraud his Creditors? Or, whether it was publickly known and consented to though he staid longer than the Time' he had agreed. As such, the issue to be decided related solely to the 'Length of Time' Gulston was abroad, with the jury eventually finding that no act of bankruptcy had been committed.[22] Again, while this is a common law case taken from a contemporary report, it highlights a number of interesting and pertinent details relating to bankruptcy in Chancery. Firstly, it gives a detailed description of how, and why, a case in Chancery might be sent to a common law jurisdiction for a jury to determine a factual question. But more importantly, it shows that the intention of the debtor was of crucial importance in determining whether or not they had committed a criminal act of bankruptcy. As seen above, contemporary advice manuals highlighted a number of ambiguities, and even absurdities, in the practical implementation of the law, but they did not provide information on how to overcome such issues.

With the law and subsequent legal guidance being open to interpretation, several suits were initiated in Chancery whereby the public nature of the act of bankruptcy, the ongoing commission of bankruptcy, and the timing between these two events were vehemently

[21] Davies, *The Laws Relating to Bankrupts*, pp.30-40, p.31.
[22] Ibid, p.39.

debated. Similarly, several individuals exhibited a genuine concern that their financial transactions would be considered void by commissioners, as the exact date of failure had not been clarified.

The Temporality of Trade in Bankruptcy Suits

Timing and the Public Nature of Bankruptcy

Questions relating to the timing of specific acts are commonplace across legal disputes, for example, party 'x' should have done 'y' at a certain time and failed to do.[23] Similarly, in certain circumstances, the law holds individuals responsible for a failure to act in instances whereby they held a legal responsibility to do so.[24] But in relation to early modern bankruptcy, the ambiguities discussed above became amplified in Chancery, as parties involved in suits vehemently debated the exact timing of failure. We have seen in the previous chapter the correct, linear path bankruptcy procedure was expected to follow, as well as several reasons why this process failed. However, opposing parties attempted to establish their own timeline of failure, which led to the exact timing of certain events — an act of bankruptcy, the assignment of a security, the sale of goods etc. — becoming contested.

We can see this contested timeline debated in a number of suits. In *Ambrose v Brookes* (1681), the plaintiff William Ambrose submitted a bill of complaint naming the bankrupt

[23] This is particularly true in contract law, whereby those engaged in a contract either adhere to the promises made, or breach the contract, see Ian R. Macneil, 'Contracts: Adjustment of Long-Term Economic Relations Under Classical, Neo-Classical, and Relational Contract Law', *Northwestern University Law Review*, vol.72 (1978), pp.854-905; Alexander J. Triantis and George G. Triantis, 'Timing Problems in Contract Breach Decisions', *The Journal of Law and Economics*, vol.41, no.1 (1998), pp.163-208; Eric A. Posner, 'A Theory of Contract Law Under Conditions of Radical Judicial Error', *Northwestern University Law Review*, vol.94, no.3 (2000), pp.749-774.

[24] See John Kleinig, 'Criminal Liability for Failures to Act', *Law and Contemporary Problems*, vol.49, no.3 (1986), pp.161-180.

William Skinner, two commissioners, and two further creditors as defendants. All that survives from this suit is the joint-answer of four defendants — not including the bankrupt — which provides a clear example of debates surrounding the timing of failure. What is interesting, is that the defendants accept the vast majority of the claims made in the bill of complaint. It is accepted that Ambrose arrested the bankrupt for the failure to repay a debt of over £90, and that Ambrose received a judgment from the court of King's Bench which assigned Skinner's house to the plaintiff in order to satisfy the debt. Indeed, the main objection of the defendants concerned the timing of this arrest and assignment. Quite simply, the defendants claimed that the arrest took place, 'after the said Skinner was become a Bankrupt or had done Acts whereby hee was afterwards adjudged or declared a Bankrupt before the time of the arrest'. As such, Skinner had 'committed Acts of Bankrupcy before the time of the last Assignment or Securetie was entered into'. As creditors themselves, the defendants had taken out a commission of bankruptcy, and as such, the plaintiff's only recourse was to come into the commission as a creditor, pay his contribution money, produce his securities as proof of the outstanding debt, and receive a dividend.[25] Similarly, in *Price v Gough* (1730), the assignees of James Gough, a broker from London, appeared as defendants. In their answer, they established that a commission of bankruptcy was taken out on 7 February 1727, and James Gough was declared 'to have been a Bankrupt before the date and suing forth of the said Commission'. As such, the defendants were clearly attempting to establish that the commission was legally executed, and the commissioners had declared Gough a bankrupt. However, the defendants claimed to not be aware of when the bankrupt committed any acts of bankruptcy, concluding, 'But when or upon what day particularly the said James Gough did first become a Bankrupt these Defendants do not know and Cannot

[25] TNA, C6/369/77, 'Ambrose v Brookes' (1681), Answer of William Brookes, John Johnson, Francis Scott and Daniel Duthais.

setforth'.[26] In relation to a specific assignment of South Sea Stock, the assignees suggested that if Gough was a bankrupt before the first execution of the Stock, 'which these Defendants have not yet discovered', they would demand that they, 'shall be well intitled to the Dividends and Produce of the said stock and Annuitys during the lifetime of the said James Gough'.[27] In this example, even the assignees were uncertain of the exact date of bankruptcy and could not definitively establish whether the South Sea annuities should fall within the scope of the commission or not. By suggesting that they had yet to 'discover' whether the act of bankruptcy occurred before the assignment, they leave the timing of the bankruptcy to the decision of the court.

Finally, in *Camfield v Warren* (1699-1700), the plaintiff Francis Camfield was an assignee of Thomas Field, and submitted a bill whereby he accused the bankrupt of 'fraudulently and with Evil intent' assigning a large portion of his estate to the other six defendants. As such, much of the suit centred around the timing of specific paper instruments.[28] In his answer, Jeremiah Cole stated, 'he beleiveth it to be true' that a commission of bankruptcy was issued against Field, but did not know 'whether the said Thomas Field Committed any act of Bankrupcy before the Issueing forth of the said Commission'. Cole concluded that 'if the said Thomas Field did Comitt any Act of Bankrupcy and became a Bankrupt the same was done as this defendant verily believes after the said Assignment and Judgment and not before'. Ultimately, a number of securities 'were given to this Defendant before any Commission of Bankruptcy issued against the said Thomas Field and before any act of Bankrupcy was committed by the said Thomas Field to the knowledge or beliefe of this Defendant'.[29] In a similar manner, Thomas Warren stated in his answer that he was unaware of Field

[26] TNA, C11/2034/33, 'Price v Gough' (1730), Answer of Edmund Crull and Phillip Hale.
[27] Ibid.
[28] TNA, C6/391/16, 'Camfield v Warren' (1699-1700), Bill of Complaint.
[29] Ibid, Answer of Jeremiah Cole.

committing an act of bankruptcy, but was willing to have the goods in his possession appraised, 'in case upon a Tryall at Law … it should be found that the said Thomas Fields did become a bankrupt before his Executing the said Bond'.[30] These three cases clearly demonstrate the inability of creditors, assignees, and commissioners to establish a specific date for failure. This created practical difficulties in the bankruptcy process as competing parties debated the goods, transactions, and estate to which they held a legal right. However, what these suits also show is the inability to effectively judge the social and economic standing of the bankrupt around the point of their failure. References in individual statements to their 'belief' or 'knowledge' of the declarations of the commission, or the actions of the bankrupt, demonstrate that circulating judgements regarding individual traders were difficult to quantify. Ultimately, the complexities of bankruptcy, and the ambiguities present in its procedure, upset the manner in which circulating judgements were communicated and known within the wider community.

These complexities are clearly illustrated in a case of extended indebtedness from 1689, in which the facts of the case are undisputed, and presented as follows. John Todd borrowed £50 from James Robinson, in which the plaintiff Joshua Guest stood security. Todd subsequently furnished the Earle of Westmorland with several parcels of wine to the value of £50, and the Earle directed his assistant John Arney to satisfy the bill of sale by paying Todd for the goods. Todd then assigned the bill of sale over to Guest, which would have completed the intricate circle of transactions and settled all outstanding debts. Indeed, upon seeking guarantees from all parties concerned, Guest paid the initial loan of £50 back to Robinson, and awaited payment from Arney. However, Guest claimed that unbeknown to him, a commission of bankruptcy had already been issued against Todd, and as such, Arney refused

[30] Ibid, Answer of Thomas Warren.

to honour the bill of sale.[31] In his answer, Arney agreed with the plaintiff's version of events, but suggested that he was 'afraid to pay the Complainant the said Fifty pounds for feare he may be lyable to pay the same over againe', by order of the commissioners.[32] While the veracity of this claim is impossible to verify, the response seems credible, as if Todd was declared a bankrupt, then the commission of bankruptcy would have held legal rights over all of Todd's credits, debts and estate, including the bill of sale. Therefore, if Arney would have paid the bill of sale after Todd was known to be a bankrupt, then this transaction would be considered void, and it is possible that the commissioners could demand Arney satisfy the bill of sale a second time, for satisfaction of the commissioners. This is a good example of the manner in which knowledge — or a lack of knowledge — of the bankruptcy process had unsettled established credit networks. There is an inherent fear presented in this suit, whereby the uncertainty surrounding the outcome of bankruptcy had directly influenced the actions of certain individuals.

Similarly, in *Bosville v Denne* (1704-1706), the defendant Robert Sandford was indebted to William Nehoffe for timber sold to him, amounting to £74 18s. As such, Sandford issued a note, dated 6 December 1704, which was to be satisfied before 26 January. Shortly after receiving the note, and having 'occasion for money', Nehoffe applied himself to the plaintiff, John Bosville, in an attempt to get the note discounted. Having asked Sandford about the legitimacy of the note, and being assured that it would be paid on time, the plaintiff paid £74 for the note on 13 December 1704, leaving a potential future profit of 18s. Yet, sometime between the discounting of the note and its due date, a commission of bankruptcy was awarded against Nehoffe, and all of his goods were assigned to a second named defendant, Cornelius Denne. Bosville claimed very confidently that the commissioners could not touch

[31] TNA, C6/416/12, 'Guest v Arney' (1689), Bill of Complaint.
[32] Ibid, Answer of John Arney.

his note, as it was discounted long before any commission of bankruptcy was executed. However, the plaintiff also stated that Sandford had refused to satisfy the note, as he 'feared that in case he payd the said money to your Orator he might be in danger of paying the same over again'. Ultimately, Bosville alleged that the bankrupt and these two defendants had confederated to defraud him of his just debts, by claiming that the note was not discounted until after Nehoffe had been declared a bankrupt.[33] In the only answer that survives, Cornelius Denne admitted that no act of bankruptcy was committed until 19 January 1705, but denied that any money was ever due to the plaintiff.[34] If we take Denne's response at face value, then it can be concluded that the note was definitively discounted prior to any acts of bankruptcy being committed. However, we can see in this example how the complexity of financial arrangements, involving several parties, could lead to various interpretations of the chronological timeline of events. Here, we see how the disputed act is actually the discounting of the note — rather than the issuing of the note itself — interacting with the complexities of bankruptcy. Indeed, throughout all of these cases, the difficulty in attempting to establish exactly when a debtor became a bankrupt, both legally, and in the eyes of the wider community, is clearly illustrated. Largely, this is because of the uncertainty of the flow of information and the circulation of public knowledge regarding the timing of bankruptcy.

Several suits in Chancery directly and more explicitly commented on the public nature of proceedings. As the first meeting of creditors had to take place within two weeks of the declaration of bankruptcy by commissioners, many creditors remained ignorant of the very existence of a commission, and others would have been unable to attend a meeting in London at short notice. This led to the possibility of assignees being chosen from an unrepresentative selection of creditors, and accusations of fraud were commonplace. In *Fotheringham v Fell*

[33] TNA, C6/379/39, 'Bosville v Denne' (1704-1706), Bill of Complaint.
[34] Ibid, Answer of Cornelius Denne.

(1720), the defendants complained that the commission of bankruptcy was 'kept private or not proceeded upon for a long time'.[35] As such, the creditors suggested that they were unable to enter the commission in due time and had been purposefully excluded. In *Croxton v Moffatt* (1730), the plaintiff George Croxton was a merchant from Manchester and the assignee of John Hornblower, a trader from Abergavenny, Monmouthshire. In his bill of complaint, dated 16 April 1730, Croxton accused the bankrupt and several defendants of fraudulently executing a commission of bankruptcy in 1729, with the intent of 'Excluding your Orator and other his Creditors in the Country from their proportionable Shares thereof'. As such, Croxton claimed that knowledge of the commission had not reached any creditors outside London, which was done in order to allow the bankrupt to return home and enter into 'fresh credit' in the country. By doing this, it was hoped that the bankrupt could raise extra money in his local community in order to pay his creditors in London their full demands.[36] Croxton had managed to get the initial commission superseded and a new one executed by claiming that the creditors in London had kept the commission, 'in their pockets and Concealed from the knowledge of your Orator'.[37] In contrast, the three defendants denied that the bankrupt had any prior knowledge of the commission, suggesting he was 'much Surprized and Solemnely protested to these defendants that he had not committed any act of Bankruptcy'.[38] Within this suit, we clearly see debates surrounding the ability to circulate information about a commission throughout the country.

In *Kellaway v Smith* (1730), the plaintiff William Kellaway suggested that the two assignees and defendants, Thomas Barton and William Dicks, both wine coopers from London, executed a commission of bankruptcy against William Smith, a vintner from London, in

[35] TNA, C11/38/15, 'Fotheringham v Fell' (1720), Answer of John Frost and Thomas Dunckley.
[36] TNA, C11/250/14, 'Croxton v Moffatt' (1730), Bill of Complaint.
[37] Ibid.
[38] Ibid, Answer of James Moffatt, Francis Risden and Lancelot Andrews.

order to nominate themselves assignees. As these individuals were all experts in the same trade, Kellaway alleged that the commission was fraudulently devised so that Barton could buy the bankrupt's goods at a much lower value than their true worth.[39] This was a fairly common accusation levelled against bankrupts, whereby they were accused of quickly, and fraudulently, filling initial meetings with friendly or fictitious creditors in order to nominate compliant assignees. In their answer, both Smith and Barton explained that a bankrupt cannot choose an assignee, and both assignees were chosen from amongst the creditors who entered the commission. Yet, what is damning for the plaintiff, is that both defendants claimed that Kellaway was first offered the role of assignee but turned it down. Furthermore, Barton stated that the meeting of the creditors was advertised in the *Gazette*, and was open to the public for all to see and attend if they so wished.[40] Barton focused on the public nature of proceedings to counter accusations of fraud, as acting openly and in public during the time of proceeding quashed the notion that they had acted in a clandestine manner. By suggesting that the plaintiff had knowledge of the commission, and refused the role of assignee, Barton refutes any accusation of executing the commission with the intention of benefitting the bankrupt.

Potential Future Returns in a Commission of Bankruptcy

Discussing the various options available to businessmen, Hoppit has suggested that 'Debt collection was indeed akin to an investment', as creditors had to weigh up the cost of repayment against estimated returns.[41] Here I will analyse the potential risk and reward dynamic of a commission of bankruptcy. As such, it is worth beginning by analysing one case in detail, as while it speaks to several issues discussed above, it also demonstrates how the bankruptcy process could affect future decisions. In *Pollard v Launder* (1725), the two plaintiffs were assignees of three co-partners, Henry, Mary, and Elizabeth Brunsell, all

[39] TNA, C11/2426/18, 'Kellaway v Smith' (1730), Bill of Complaint.
[40] Ibid, Answer of William Smith; Answer of Thomas Barton.
[41] Hoppit, *Risk and Failure in English Business,* p.41.

mercers from Middlesex who had previously been declared bankrupts. In their bill of complaint, dated 13 April 1725, the plaintiffs claimed that the three bankrupts had fraudulently assigned various securities to several defendants, including bonds for a 'considerable penalty', a warrant of attorney, and a mortgage for a property in Nottinghamshire. The plaintiffs stated that the bankrupts were never truly indebted to these defendants, and all securities were entered into, 'under some Secret promise Trust or engagement in order to secrete and conceal the said Bankrupts Estate from other their reall Creditors'. At the time of executing these transactions, and to add legitimacy to their actions, the defendants pretended that the co-partners were in 'declining circumstances', but really the securities were transacted for 'a farr greater summe than was really due'. Furthermore, any securities were given after the co-partners became bankrupts, which the defendants 'well knew in their consciences to be true'.[42] In contrast, all three defendants insisted that any financial transactions were entered into as genuine securities for money lent. One defendant named Benjamin Wilcox stated that while a commission of bankruptcy had been executed against the three co-partners, he believed that 'the said Brunsells never Comitted any act of Bankrupcy previous to the suing out of the said Comission' and as such, the plaintiffs would be unable to 'prove any act of Bankrupcy in the said Brunsells In Case the said Question should ever Come to be Disputed in a Legall and proper manner'.[43] However, this suit centred around the perceived credibility of the three co-partners at the time of executing various securities, and the defendants provided detailed accounts of their interpretations of the three bankrupts during their personal trade with them.

William Lauder stated that he had dealt individually with Henry Brusnell for over two years, but was not aware that the three were mercers, or co-partners, 'untill after the time when he

[42] TNA, C11/291/33, 'Pollard v Launder' (1725), Bill of Complaint.
[43] Ibid, Answer of Benjamin Wilcox.

saw notice in the Gazette that a Commission of Bankrupt was taken out against them as partners'. Launder asserted that he did not believe Henry Brunsell 'was in bad and low Circumstances both before and at the time when he gave the said Warrant of attorney to this Defendant But this Defendant saith he believed when the same was given that he was of ability to pay all his debts'.[44] Again, we see questions relating to the public knowledge of an individual's trading activities being raised, as Brunsell claimed ignorance of the business partnership. However, he also claimed that the bankrupt was able to satisfy all of his debts at the time of executing the warrant of attorney, demonstrating that his assessment of credibility was based on his physical ability to repay. In his answer, Charles Turner stated that he was 'intimately acquainted' with the bankrupts' late father, the Reverend Henry Brunsell, a Rector from Bingham, Nottinghamshire. Turner claimed that having a 'great value and Esteem' for the Reverend's memory which extended to his three children, he agreed to lend the sum of £100 to carry on their trade. During this time, he believed they were in 'good circumstances', as they had inherited a property which was to be sold in order to repay the loan. However, in June or July 1724, Turner learnt that rather than selling the property, the three had 'mortgaged the same twice over' to other creditors, and so decided to take goods as a further security, all of which occurred before the son Henry Brusnell was declared a bankrupt.[45] This is an interesting answer, as while we again see an assessment made on the three bankrupts' ability to repay, it also appears that the extension of credit was founded on the respect Turner held for the Brusnell family. Individuals engaged in the debt-recovery process struggled to look back and clarify the legal and moral standing of debtors at certain points in the past. This had ramifications for specific future events, as such uncertainty meant

[44] Ibid, Answer of William Launder.
[45] Ibid, Answer of Charles Turner.

that financial transactions were delayed until clarification could be ascertained, either through official bankruptcy procedure, or by recourse to Chancery.

As a relatively expensive process, creditors would need to try to calculate the cost of entering a commission of bankruptcy against the potential future dividends, which at certain stages could only be quantified in rough estimates. One anonymous tract suggested that even if creditors did have notice of a commission, 'the Contribution is so high, that it is not worth their while to come in; and it is probably raised so high on Purpose to keep them out'.[46] In a similar manner, assignees often found themselves in a difficult and uncomfortable position, being placed between attempting to collect and distribute the bankrupt's estate, while at the same time collecting contribution money from the remaining creditors. Examples of assignees encountering difficulties in Chancery are manifold. William Barloe of London stated that in the five years since the execution of the commission, he had only recovered £100 from the bankrupt's estate, despite being owed more than £6000.[47] The situation had become bleak for the assignees of John Prowse of Bristol, as despite owing more than £1000, the bankrupt only had a small estate, while his debtors had themselves become insolvent. Without raising substantial contribution money from further creditors, the assignees did not have 'sufficient to answer or Satisfy one Quarter part of the Charges of Executing and Carrying on the said Commission'.[48] As is clear from these examples, it could be beneficial for creditors to gain a greater understanding of the size and substance of the bankrupt's estate in an attempt to assess the possibility of future returns before paying their contribution money. This is perhaps best illustrated by dissecting *Cotton v Hussey* (1698-1699), a complex case consisting of competing and contradictory interpretations of the role of the assignee.

[46] *Considerations Upon Commissions of Bankrupts*, p.15.
[47] TNA, C11/587/2, 'Barlow v Boehm' (1750), Bill of Complaint.
[48] TNA, C11/664/30, 'Freeke v Franklin' (1715), Bill of Complaint.

In this suit, the plaintiffs were creditors of Simon Fydell, a chapman from Lincolnshire who was declared a bankrupt in October 1694 for debts amounting to £2000. The bill of complaint alleged that an acting assignee named John Hussey had mismanaged funds that had come into his possession. Having initially charged 2s. 6d. in the pound contribution money, and raising a total of £1024 9s. 10½d., Hussey sought to contrive and 'deprive your Orator from all benefit and advantage by the said distribution'. Hussey was said to have acted frivolously and 'with intent only to keep the said money' to benefit himself.[49] Hussey countered the accusation by suggesting that the commission of bankruptcy was fraudulently executed by the bankrupt's brother, Joseph Fydle, 'more for the said Bankrupts benefitt' than for the benefit of the other creditors. As such, Hussey and several other creditors petitioned the Lord Chancellor to assign at least one additional commissioner who, once appointed, made Hussey the new assignee. In his answer, Hussey admitted charging 2s. 6d. in the pound contribution money, and even accepted that one plaintiff, Cawdron Blow, did pay such a sum to the defendant. However, Blow refused to come in at the earliest point of asking and was therefore excluded by the commissioners from receiving any distribution from the first dividend, dated 18 April 1696. It was not until Blow discovered that the second dividend of 24 December 1697, was to be of a considerable amount, that he became eager to enter the commission. Yet, Hussey felt this was a 'hardshipp' to the other creditors who had expended great sums in order to discover and recover the estate, 'before they knew whether they should be reimbursed any thing or not'. As such, Hussey was willing to reimburse the complainants their latest contribution money but left the decision up to 'the consideration of this honourable Court', whether they should be allowed in to receive a portion of the second dividend.[50] It appears that all parties within this suit demonstrated a fear of receiving less than

[49] TNA, C6/393/8, 'Cotton v Hussey' (1698-1699), Bill of Complaint.
[50] Ibid, Answer of John Hussey.

they felt they were due. However, we also see the costly nature of bankruptcy procedure and the need to weigh up the potential benefits of entering this official path seen in action. The plaintiffs in this suit were unable to effectively value the estate of the bankrupt at the time of the commission first being executed. Ultimately, this failure can be seen as an inability to quantify future payments from the bankrupt's estate.

Broadly speaking, an inability to satisfy debts resulted in ongoing conflict, not just between debtors and creditors, but amongst creditors themselves. In *Barnes v Baldwin* (1698), a creditor was concerned with the ongoing commission of bankruptcy and so initiated a suit against every active member of the commission, consisting of four commissioners, two assignees, and the bankrupt himself. In response, the assignees and commissioners answered together, stating they were 'meer Strangers to and ignorant of all and every the thing and things matters Charges and transactions in the said bill of Complaint'. The commissioners explained that they held 'power and authority to execute the said Commission upon the examination of several witnesses upon oath'. As such, if the plaintiff paid his contribution money and proved his debts to the commissioners, 'he shall have liberty to see all the Examinations and other proceedings upon the Commission and have an Account of what has been received'.[51] In this case, the commissioners clearly established their authority over the plaintiff and explained their role in executing the commission of bankruptcy. It appears that in this instance, the plaintiff was seeking a discovery of the ongoing investigation without having paid his contribution money.

Those creditors that had managed to take notice of the commission, and paid their contribution money, sought to extract as much as possible from the process, feeling aggrieved

[51] TNA, C6/387/74, 'Barnes v Baldwin' (1698), Answer of Samuel Baldwin, Richard Chauncy, John Cole, Thomas Reeve, John Cooper and Renier Lampe.

when they ran into stumbling blocks. Individuals within the process were well aware of the ways in which large portions of a bankrupt's estate could be channelled towards some creditors and away from others. Such a fear is highlighted by the assignees in *Marsh v Cadwell* (1720). In a bill of complaint submitted on 17 February 1721, the complainants claimed that John Clever committed an act of bankruptcy on 2 December 1720 before being declared a bankrupt by the commissioners five days later. With such a short period between these events, the plaintiffs suggested that Clever clandestinely assigned stock in the South Sea Company to several named defendants after 2 December, and as such, all stock, 'ought to be restored to your Orators for the use of the said Bankrupts Creditors in general'. The plaintiffs were fearful that they would not be able to get full access to Clever's estate, and concluded that the defendants 'ought not on any pretence whatsoever to retaine' the stock for their use. Ultimately, all of the bankrupt's creditors should be 'on an equal foot, and not one preferred before or paid more than another'.[52] In this case the creditors of the bankrupt acted swiftly by executing a commission of bankruptcy five days after the initial act of bankruptcy, and subsequently initiating a suit in Chancery two months later.

In *Cady v Hunt* (1730), the plaintiffs were assignees of Gibson Moody, after a commission of bankruptcy was executed on 7 February 1727. The complainants sought a discovery of the bankrupt's estate which had come into the hands of six defendants. The bill suggested that two of these defendants, John Eley and William Baker, had illegally seized over £200 of the bankrupt's shop goods, insisting that 'the said Bill of Sale (if any such there is) was executed after such time as the said Gibson Moody had become a Bankrupt', which occurred on 30 January.[53] The bill went on to suggest that the defendants continued to insist 'that they had purchased the same from the Bankrupt before his Bankruptcy for a just and valuable

[52] TNA, C11/1420/31, 'Marsh v Cadwell' (1720), Bill of Complaint.
[53] TNA, C11/500/8, 'Cady v Hunt' (1730), Bill of Complaint.

consideration'.[54] To further complicate matters, another defendant named Charles Hunt, claimed to be an assignee of John Eley, and suggested that William Baker had also been declared a bankrupt a short time after Moody.[55] Ultimately, there were three distinct and separate commissions of bankruptcy all claiming a legal right to Gibson Moody's estate. In their joint answer, Eley and Baker stated that the bill of sale was executed on 29 January 1727, and that Moody did not commit any acts of bankruptcy until after that date.[56] What is interesting in this case, is that the timeline for failure is very concise. Indeed, the plaintiffs alleged that the bill of sale was executed on 30 January, while the defendants claimed it was a day earlier, both of which were prior to the commission being executed. Once the date on which the bill of sale was executed had been agreed, disagreements centred on when any acts of bankruptcy were committed. Parties in this suit presented their arguments and appeared as frustrated creditors or debtors in a complex and interconnected web of indebtedness and failure.

These suits illuminate a number of interesting aspects of debt recovery. Firstly, we again see another level added to the complexity of bankruptcy procedure, as creditors needed to try to weigh up the potential risk and reward dynamic of a commission. This became intensified when there were numerous commissions, and several claims, upon an estate. Secondly, the assignees were very often the largest creditors of the bankrupt. As such, we can clearly see the difficulties they encountered while trying to raise enough funds — through the discovery and seizure of the bankrupt's estate, as well as through contribution money from other creditors — to continue the process. However, accusations of fraud were commonly aimed at assignees for not distributing an estate evenly, or for acting on the bankrupt's behalf. We

[54] Ibid.
[55] Ibid, Answer of Charles Hunt.
[56] Ibid, Answer of John Eley and William Baker.

clearly see a number of creditors explicitly complain, and demonstrate a substantial fear, that they would receive less than they felt they deserved, or even less than another creditor in the process. In this manner, creditors had not only lost their initial capital, but the bankruptcy process held the potential to actually increase such losses. Ultimately, bankruptcy suits in Chancery can grant us unique access to specific aspects of the temporality of trade regarding the way in which individuals judged the credibility of an individual in the past, as well as how creditors sought to look to the future and analyse their potential returns. With this in mind, the next section analyses how individuals within this process judged the actions and motivations of others, as well as how they assessed genuine and fraudulent debts.

The Actions and Motivations of Debtors

Within the scope of circulating judgements about failure, individuals began to question the motivation behind certain actions undertaken by parties within the bankruptcy process. Contrasting interpretations of a range of financial transactions were largely seen as fraudulent — and done with an intent to defraud creditors — or seen as completed for a genuine and valuable consideration. As such, we can begin to analyse the language utilised around fraud and sincerity, and the manner in which such narratives were constructed within pleadings. Examples of these opposing descriptions and interpretations are numerous, but can be clearly seen in *Vognell v Mann* (1725). In this suit, the creditor-plaintiffs accused two bankrupt co-partners, Christian and Frederick Gulcher, of fraudulently assigning to the defendant Edward Mann, several quantities of 'Plate Linen Jewells money … in order to Secret and Conceal the Same from their said Creditors'. When the complainants sought to come to an account with Mann for the goods he had received, Mann simply explained that the goods were assigned as part of money lent to the two bankrupts, prior to any acts of bankruptcy.[57] In a more complex

[57] TNA, C11/2731/55, 'Vognell v Mann' (1725), Bill of Complaint.

case from 1725, the assignees of Richard Wooley accused the bankrupt of a fraudulent transfer of York Building stock. One of the plaintiffs, Alexander Burn, initiated a suit against Wooley in the court of King's Bench for a debt of £120 due on bond. As such, Wooley was arrested in October 1723, for which the two defendants, Robert Fotherby and William Lilly, stood bail. In order to indemnify the defendants against any future damage, Wooley transferred £1000 York Building stock, which was agreed to be assigned to Wooley's creditors once the suit was dropped. However, upon his release, Wooley committed several acts of bankruptcy and a commission was executed on 24 February 1724. Having appeared before the commissioners and truthfully revealed his assets, Wooley was granted a discharge, and a certificate of conformity was issued on 19 December 1724. Yet, according to the bill of complaint, dated 21 April 1725, the defendants now claimed that the transfer of stock was not to indemnify them against damage for standing bail, but was assigned in consideration of a genuine debt due from Wooley, prior to the commission of bankruptcy.[58] As such, the complainants sought the appearance of the defendants and the bankrupt under oath, to clarify the reason why the stock had initially been transferred.

These are fairly common accusations of fraudulent conveyance and fairly typical responses. All conveyances assigned before the act of bankruptcy were to be made void, unless it could be shown that they had been made for a genuine value and consideration. As such, the burden of proof was firmly placed upon the bankrupt, and the person involved in the conveyance, to prove the legitimacy of their financial transactions. To complicate matters further, a fraudulent conveyance could itself be judged an act of bankruptcy, as it could be interpreted as denying creditors a due satisfaction of their claims.[59] This can be seen in *Streare v Hume* (1750), whereby the plaintiffs were assignees of Catherine Hume, a grocer and mercer from

[58] TNA, C11/2730/158, 'Story v Wooley' (1725), Bill of Complaint.
[59] Jones, 'The Foundations of English Bankruptcy', p.31.

Devon. In their bill of complaint dated 6 April 1750, the plaintiffs claimed that on 26 April 1748, the bankrupt did 'Execute a pretended Bill of Sale of all her Household and shop goods and all Debts due and owing to her and of all her Books of account', to her daughter, also Catherine Hume. As such, any valuable consideration claimed by the bankrupt was 'false and ficticious'. Furthermore, the plaintiffs suggested that any goods assigned over in the bill of sale actually stayed in the hands of the bankrupt, enabling her to carry on her trade. Ultimately, this fraudulent bill of sale, 'was of itself an act of Bankruptcy', which eventually led to a commission being issued on 25 November 1748. In this suit, we again see creditors looking back and surmising that because of her 'bad and desperate Circumstances', the bankrupt decided to fraudulently execute a bill of sale to her family member.[60] More broadly, suspicions were raised if a debtor had assigned much of their estate to relatives or close friends prior to failing. A common accusation made in Chancery was that debtors could foresee their own failure and so attempted to conceal portions of their estate.

In *Long v Good* (1720), the plaintiffs and assignees of John Coombe suggested that Coombe became indebted to several individuals above and beyond what he was able to pay, and had 'an unjust Intention to distribute his whole substance that remained amongst his Relations and particular Friends in or towards satisfaction of their severall Demands exclusive of his other Creditors'. According to the complainants, Coombe had warned these individuals of the 'badness of his Circumstances' and assigned several goods for satisfaction of exaggerated debts.[61] Similarly, in *Stoner v Crowe* (1720), the plaintiffs and assignees of Walter Compton, suggested that the bankrupt secreted himself and his effects, while simultaneously paying his friends and relatives their full debts.[62] In response, three defendants stated that the goods

[60] TNA, C11/1637/23, 'Streare v Hume' (1750), Bill of Complaint.
[61] TNA, C11/2284/114, 'Long v Good' (1720), Bill of Complaint.
[62] TNA, C11/34/37, 'Stoner v Crowe' (1720), Bill of Complaint.

assigned were in relation to a payment of genuine debts owed, and therefore submitted a demurrer, as they felt they should not be forced to submit an answer.[63] Ultimately, certain creditors felt aggrieved at seeing others repaid in full while they had to endure the costly and time-consuming process of entering a commission of bankruptcy, only hoping to receive a portion of their debts. However, there is a clear contradiction to the modern reader throughout these arguments, as often, one side was suggesting that all transactions had been enacted fraudulently, and no debt was really due; while on the other hand, all conveyances were genuinely transferred for outstanding debts. While we can never uncover the truth behind these cases, what is interesting is the idea that despite the alternative routes available to debt recovery, a commission was somehow inevitable, and that debtors sought to evade the power of the commission in any way possible.

In *Handley v Walton* (1735), the plaintiffs were the assignees of John Chapman, a linen draper from Berkshire. In their bill of complaint, submitted on 26 February 1735, the plaintiffs claimed that 'with intent to defraud and Hinder' his creditors, Chapman assigned a bill of sale for all of his goods to the named defendants, James Walton and Petley Price. While this 'might appear to be fairly made' for the security of £150, it was in fact 'Clandestinely and fraudulently made and without any Valuable Consideration whatsoever'.[64] Furthermore, at the time of his absconding, all goods were still in the bankrupt's house, meaning Chapman maintained 'the peaceable and Quiet possession and Enjoyment of his said Goods Effects and Stock in Trade in the free Exercise of his said Trade in Selling and Disposing of his said Effects Goods and Stock'. Again, we see a joint accusation, as not only was the bill of sale made for a fictitious debt, but the bankrupt managed to keep hold of their goods and continued to sell them for his own benefit. The plaintiffs stated that rather than

[63] Ibid, Demurrer and Answer of Stephen Crowe, Letitia Crowe and Charles Crowe.
[64] TNA, C11/1044/14, 'Handley v Walton' (1735), Bill of Complaint.

give up his goods to the commission, Chapman's servants sold them for one quarter of the price in order to quickly raise funds.[65] In response, only the answer of James Walton survives. Walton claimed to have sent his servant to Chapman's house with a writ for his arrest, after being put off by 'diverse frivolous and trifling Excuses' for non-payment of £130. However, in exchange for his liberty, Walton had accepted a bill of sale from Chapman on 5 July 1735, for security for his just debt.[66]

In *Buckle v Hendy* (1719-1720), the bill of complaint stated that Samuel Hendy, being aware that the bankrupt James Johnstone was in 'badd Circumstances and in danger of faileing', went to his premises in Cheltenham on 11 June 1719. At twelve o'clock at night, Hendy used 'many threats and menaces and other undue meanes' against Johnstone and his family, and forced Johnstone to deliver goods 'to the value of his pretended Debt' of £100. The complainants claimed that Hendy knew Johnstone had committed certain acts of bankruptcy, as Hendy threatened Johnstone at the property of William French, where he was absconding.[67] In his answer, Hendy stated that his first trip from London to Cheltenham to visit the bankrupt occurred on 11 June 1719, where he found Johnstone in 'declining circumstances'. While he admitted to meeting Johnstone at French's house, he believed that the bankrupt simply offered him goods as a security for his debt. Although he was 'displeased' with Johnstone for not satisfying his debt, he denied threatening him, and claimed that any act of bankruptcy was committed after this genuine transaction.[68] In this case, the central issue was whether the goods were fraudulently assigned to benefit the defendant at the expense of the other creditors. However, the plaintiffs used this allegation as an opportunity to personally attack the defendant, simultaneously strengthening their

[65] Ibid, Bill of Complaint.
[66] Ibid, Answer of James Walton.
[67] TNA, C11/31/29, 'Buckle v Hendy' (1719-1720), Bill of Complaint.
[68] Ibid, Answer of Samuel Hendy.

argument relating to fraud, as well as forcing the defendant to account for his supposedly threatening behaviour. Unsurprisingly, Stephens denied he knew of any acts of bankruptcy, and claimed that the mortgage was taken out as a security for money lent. Therefore, at the time of becoming a bankrupt, the property was legally in his possession.[69] In this case, we see two dramatically different interpretations of a single act, which demonstrates how individuals could use court proceedings for their own benefit. In this suit, the plaintiff was manipulating the timeline of bankruptcy to suggest that Tappenden knew he was going to fail, and as such, assigned part of his estate to Stephens to prevent his creditors gaining access to it. Despite the fact that the mortgage was assigned some five years prior to the commission of bankruptcy being taken out, the plaintiff simply stated that this was either fraudulently back-dated or never executed.

Analysing the arguments presented in these suits in greater detail, a number of points arise. Perhaps most obviously, we see several debates surrounding the motivation behind a single act; most notably, whether the act itself was fraudulently devised to deceive creditors, or whether it was undertaken for a valuable consideration. This led almost naturally to discussions surrounding the nature of debt, and whether the debt itself was genuine or fraudulent, with words such as 'pretended', 'fictitious', and 'fairly made' utilised to describe such transactions. However, in order to justify such claims, parties needed to provide background on why certain individuals would have acted in such a manner. We see here how the narrative has been altered to directly discuss the individual, rather than the act, as again, those involved in the process sought to look back and clarify the circumstances of the debtor. References to the 'bad and desperate', or 'declining', circumstances of individuals, who were 'in danger' of failing were frequently made. This led to debtors acting with an 'unjust

[69] TNA, C11/1525/26, 'Sole v Stephens' (1735), Answer of John Stephens.

intention' and 'with intent to defraud and hinder'. Yet, these contrasting interpretations demonstrate that the ability to judge a person's circumstances and trustworthiness was a difficult and complex task. Indeed, discussing the duality of honest and fraudulent traders, one tract, entitled *Observations on the State of Bankrupts: Under the Present Laws* (1760), stated that a bankrupt 'stands in different lights to different people'.[70] Bankruptcy unsettled circulating judgements and the information flow regarding failure as its complexities made solidifying such assessments challenging. However, one way to try to overcome these obstacles — which is seen in passing above and discussed in detail below — was to discuss the secret and clandestine nature of actors and their actions. Ultimately, if an individual was trustworthy and acting in a reputable manner, then they would be undertaking such tasks in public in order to allow for, and even promote, circulating judgements about themselves.

The Public Actions of Individuals

The examination of the public nature of proceedings, as well as the actions of individuals, was used as an accusation or defence against fraud within Chancery. Largely, such a focus centred on the duration in which trading activities were seen to be occurring within the public sphere. Paul Glennie and Nigel Thrift have shown how traders were expected to operate specified hours on certain days to maintain the regulation of markets.[71] There was an expectation that trustworthy and credible individuals would fulfil certain duties at specified times, and as traders looked back at the point of bankruptcy, they began to analyse how a debtor had failed in these conceptions. The bankruptcy of Nicholas Waddington was spread across two suits in 1697, both of which concerned the ownership of several estates in Yorkshire between 1688 and 1690.[72] While only a concise copy bill and three answers

[70] Nomius Antinomus, *Observations on the State of Bankrupts: Under the Present Laws. In a letter to a Member of Parliament* (London: 1760), p.2.
[71] Paul Glennie and Nigel Thrift, 'Reworking E. P. Thompson's "Time, Work-Discipline and Industrial Capitalism"', *Time and Society*, vol.5, no.3 (1996), pp.275-300.
[72] TNA, C6/384/70, 'Brocklesby v Waddington' (1697); TNA, C 6/381/42, 'Brocklesby v Hey' (1697).

survive, these documents clearly illustrate issues surrounding the public nature and the perceived fraudulent execution of a commission. In Thomas Braddyll's answer, the defendant claimed that the plaintiff's brother 'or some neare Relation', married a sister of Waddington, and being aware of the impending commission of bankruptcy, concocted a fraudulent debt between the bankrupt and the plaintiff. These individuals then used this fictitious debt to execute a lease of some of the bankrupt's land in order to conceal it from his creditors and keep it within the family.[73] Braddyll further stated that the plaintiff must have had notice of the commission of bankruptcy, as 'the Said Commissioners proceeded openly and publickly with all fareness and justice and did sitt att some tyme or Times neare to the said Waddingtons house and att other Towns and places not farr distant'.[74] Similarly, in the joint answer of Waddington and John Burton, the two defendants claimed that Waddington could not be considered a bankrupt during this period, as he traded openly, in public, and for over £5000 between 1688 and 1690.[75] All three defendants use the public nature of actions and activities to refute accusations of fraud and failure. Waddington and Burton use this notion to argue that Waddington could not have been untrustworthy at the alleged point of failure, as he was acting in his normal manner, publicly trading for vast sums of money. As such, Waddington was available to trade within normal working hours.

Barrett v Stephens (1702-1706) includes several previously discussed issues relating to circulating knowledge about failure, but also contains insightful information regarding the public nature of trade. In a bill of complaint submitted on 6 February 1701, Benjamin Barret stated that the defendant Joshua Stephens had agreed to pay £705 for £500 East India Stock in May 1700. However, Stephens failed to complete the deal in time and the stock fell in

[73] TNA, C6/381/42, 'Brocklesby v Hey' (1697), Answer of Thomas Braddyll.
[74] Ibid.
[75] Ibid, Answer of Nicholas Waddington and John Burton.

price. It was agreed that the plaintiff would sell the stock for £644 10s. and Stephens would cover the loss of £58 10s. Stephens paid £6 in cash and gave a note for the remaining £52 10s. in the name of another defendant, John Martin, which was to be satisfied on 17 September 1700. While Martin agreed it was a just debt, after six months of non-payment the plaintiff had Martin arrested by issuing a writ from the court of Common Pleas.[76] After several meetings, Martin desired the plaintiff 'forebear' the proceedings at law so he could satisfy his debt, which the plaintiff agreed to do. However, Barret claimed that since this agreement, the two defendants had confederated in order to 'deceive and defraud' him, and to 'share and divide' the sum of £52 10s. amongst themselves. Barret stated that the two defendants 'doe now pretend and give out in Speeches that the said Joshua Stephens is a Bankrupt … and was a Bankrupt before the time the said note was given'. Ultimately, Barret stated that Martin was now fraudulently claiming all rights to the debts and credits of Stephens as the nominated assignee.[77] Continuing his complaint, Barret claimed to have not been informed of Stephens' bankruptcy until 'a considerable time after your Orator had arrested the said John Martin upon his said note'. To further complicate matters, Martin had subsequently arrested Barret for debt in a suit at King's Bench. Barret had placed the note in the possession of his solicitor, who had since died, and being unable to locate the note, he was unable to proceed at common law and so executed a suit in Chancery.[78]

In this bill, we can see how the plaintiff suggested that information and knowledge about the failure of Stephens had not been communicated in due course. Indeed, because of the delay in informing the plaintiff about the bankruptcy, coupled with the suspicions aroused by only claiming this was the case after Martin had been arrested, Barret claimed that the failure was

[76] TNA, C6/384/116, 'Barrett v Stephens' (1702-1706), Bill of Complaint.
[77] Ibid.
[78] Ibid.

fictitious. However, it is the answer of John Martin which sheds light on the public nature of trade. Not only did Martin claim to be a genuine creditor of Stephens, but also suggested that through his own naivety, he had been the victim of fraud at the hands of the bankrupt. According to Martin, Stephens claimed that if he paid him a further £50, 'there was a business that he the said Stephens pretended he was concerned in which would be of great advantage to the Creditors towards satisfaction of his said Debts'.[79] While initially refusing to go along with the scheme, Martin felt sympathetic towards Stephens as 'he could not Trade or deale' due to the bankruptcy. In order to give 'encouragement' to get his estate in order, and 'beleiving he would be as good as his word', Martin eventually issued Stephens a note for £50 on 17 August 1700.[80] In discussing the specifics of the bankruptcy, Martin claimed that he could not set forward the particular time when Stephens first became a bankrupt, or when he first informed the complainant that he was a bankrupt, but believed that 'all or most persons did know or might know the same the said Stephens's house and warehouse being shut up for a considerable time and the Commissioners having put in a messenger unto the said Stephens's house and warehouse'. Ultimately, Martin twice utilised the inability of Stephens to trade publicly to demonstrate that knowledge about his bankruptcy was commonplace within the wider community. With his shop and warehouse closed, it was the responsibility of creditors to decipher that Stephens was in financial difficulties and to take note of the public proceeding of the commission.

Returning to Goodinge, it becomes clear that the longer the time between the act of bankruptcy and the execution of a commission, the greater the opportunity to question the scope of the commission of bankruptcy. In *Wright v Cheshyre* (1725), the commission was executed some ten months after the initial act of bankruptcy, and unsurprisingly, there arose

[79] Ibid, Answer of John Martin.
[80] Ibid.

disagreements regarding the goods and estate that should fall within the jurisdiction of the commission. In their bill of complaint, the plaintiffs and assignees of Thomas Pindar, a hosier from Nottingham, clearly established the chronology of Pindar's failure. Having owed more than £2000, Pindar absconded and secreted himself from his creditors on 11 May 1724, with a commission of bankruptcy being issued on 2 March 1725. Furthermore, the plaintiffs claimed that the commissioners had specified that Pindar was a bankrupt from 11 May onwards and were seeking all goods that came into the hands of Thomas Cheshyre from that date. It appears that the plaintiffs were aware of the unusual delay between the initial act and the execution of the commission, as they seem to pre-empt any disputes by stating Pindar was truly a bankrupt, 'some months before the date and sueing forth of the said Commission'.[81] In his answer, Cheshyre agreed that a commission was issued around the time stated in the bill, but whether Pindar was declared a bankrupt by the commissioners he could not say, 'being a Stranger to the same'. However, discussing the act of bankruptcy, Cheshyre claimed that Pindar 'did not commit any act of bankrupt whatsoever untill a month or two' after the date given in the bill. Cheshyre stated that Pindar left Nottingham on 11 May, and arrived in London on 13 May, where he appeared publicly in his warehouse. As such, Cheshyre insisted that he had had several dealings with Pindar, providing him with silk and other materials, after 11 May.[82] Throughout this suit, the timing of when Pindar officially became a bankrupt, both legally and in the eyes of the community, is continually debated. Yet, it is Cheshyre's response which is illuminating, as looking back to the alleged point of failure, the defendant claimed that Pindar could not have been a bankrupt as he appeared openly and in public at his warehouse. While the plaintiffs had interpreted Pindar leaving Nottingham as a criminal act, Cheshyre interpreted this event as a normal part of his trading activity, as he appeared

[81] TNA, C11/314/7, 'Wright v Cheshyre' (1725), Bill of Complaint.
[82] Ibid, Answer of Thomas Cheshyre.

publicly in London and continued to engage in trade in an open manner. Ultimately, this final suit demonstrates how a single act could be interpreted in dramatically different ways, and as such, could be manipulated by either side in an attempt to create a coherent narrative regarding the motivations of individuals, as well as the timeline for failure.

Conclusion

This chapter has paid closer attention to the sample of 228 cases, enabling a more detailed analysis of the narrative utilised in pleadings surrounding a dynamic series of events, which led to an individual failure. As such, it becomes clear that the ambiguities that arose within the law relating to certain aspects of the timing of failure, became intensified in Chancery as time itself became a contested concept. Indeed, parties vehemently debated the exact timing of certain events in relation to a commission of bankruptcy. Furthermore, a key theme that emerges within the narrative presented in pleadings concerned the manner in which specific actions could influence future aspects of the debt-recovery process. This is particularly true in regard to the degree of risk, investment, and potential return involved in future dealings. As such, bankruptcy pleadings can inform us of multiple aspects of the temporality of trade, not just about the past, but also about opportunities and the assessment of outcomes in the future. The complexities of the bankruptcy process upset the ability to be able to look back and judge an individual's credibility, worth, and trustworthiness.

One way in which individuals tried to clarify such details was to discuss the public nature, public knowledge, and circulating information about every aspect of bankruptcy; ranging from the actions of the individual bankrupt, to that of the knowledge of the commission as a 'matter of record'. As such, the public nature of proceedings, as well as the actions of

individuals, were utilised and manipulated in Chancery as an accusation or defence against fraud. Largely, such a focus centred around the duration in which trading activities were seen to be occurring within the public sphere. This led almost naturally into questions being raised against individuals relating to the motivations behind undertaking certain acts, as the public nature of their activities set the background to accusations of fraud. Ultimately, the complexities of bankruptcy, and the ambiguities present in its procedure, upset how circulating judgements were communicated and known within the wider community.

Chapter Three: Country Depositions in the Court of Chancery, 1678-1750

Introduction

This chapter analyses the depositional stage of proceeding in an attempt to access the narratives of individuals involved in the bankruptcy process. Broadly speaking, depositions were a chance for both sides of a dispute to interrogate witnesses, and gather evidence, to add weight to their legal claims. In a similar manner to pleadings, questions were asked, and answers constructed, in order to conform to the legal requirements of the court. However, as a far wider range of material witnesses were examined at this stage of the legal process, depositions provide detailed personal accounts of an individual failure. Indeed, by approaching these documents in a careful and considered manner — and by continuing to pay close attention to the processes and procedures that went into their creation — it is possible to reveal how the wider trading community clarified and described bankruptcies. This approach can provide us with myriad observations of the ways in which individuals chose to formulate such legal arguments in court, as well as the way in which witnesses had previously engaged with a commission of bankruptcy, and subsequently the court of Chancery. It is striking how a number of witnesses revealed details surrounding the actions, attitudes, and emotional responses of those involved in financial failure, with particular reference to the physical and psychological strain that was placed upon bankrupts and their families.

The chapter is divided into four sections. The first section outlines how the forty-eight cases which form the sample for this chapter were identified and selected through The National Archives' catalogues. All of these sources were country depositions, taken outside of London, between 1678-1750. As such, particular attention is paid to the manner in which the documents were created and utilised as evidence in the court. The second section focuses on debates in the existing historiography surrounding the value of legal records as sources of

evidence for early modern historians. This section pays close attention to current debates surrounding whether or not the 'authentic voice' of the deponents have survived, and if so, whether we can gain access to them. The third section analyses how individuals chose to represent themselves and formulate narratives concerning individual failure. Two bankruptcy depositions are analysed in detail in order to illustrate the use of particular and evocative language surrounding specific historical events. The final section builds upon the previous analysis by demonstrating how certain narratives began to be utilised as evidence in the court. Specifically, witnesses sought to show how an individual had fallen from a respectable and credible position, to that of a bankrupt.

The Taking, Filing and Cataloguing of Depositions

Witnesses in Chancery suits were examined in private, either by an officer of the court in London, or by assigned commissioners in the country. If the parties lived within ten miles of London, then witnesses were required to attend on one of the Chancery Examiners at the Rolls Office. Parties outside this jurisdiction were examined in their local communities, and as Christine Churches has shown, by the late seventeenth century, the examining of witnesses by a Chancery commission was 'no novelty in any part of the country, and elementary preparations for such an event were well understood and a matter of routine'.[1] Depositions can be found in a variety of places within the records of The National Archives, depending on the date and geographic location of the suit. Depositions taking place in London are found in series C24 and are not searchable online by subject matter.[2] However, country depositions

[1] Churches, 'The Most Unconvincing Testimony', p.210.
[2] TNA C24, 'Court of Chancery: Examiners' Office: Town Depositions', stable URL: https://discovery.nationalarchives.gov.uk/details/r/C3585 accessed 23/1/2020.

post 1714 are stored as a separate reference alongside pleadings, allowing depositions involving bankruptcy to be easily identified. Thirty-eight references survive for the post-1714 period, all of which were found in C11 dating between 1716-1750. Country depositions for the period before 1714 can be found in C21 and C22, while a further series of unpublished depositions — depositions taken in suits but never used and remain sealed — can be found in C23, none of which are searchable online by subject matter.[3] However, by cross-referencing the named plaintiff and named defendant of known bankruptcy cases — taken from the sample utilised in the first two chapters — a further ten references have been identified, all of which were found in C22.[4] Town depositions have not been included in this study as discovering an adequate number of suits would again be inordinately time consuming. Furthermore, depositions taken in the London jurisdiction involved a different procedure and process of investigation than those which occurred in the country, making a comparative analysis difficult.

Turning to the process of gathering evidence, plaintiffs and defendants had the right to nominate four commissioners, and to reject two named by the other party. Commissioners had to swear an oath to the court, whereby they would, to the best of their skill and knowledge, 'truly and faithfully and without partiality … take the Examinations and Depositions of all and every Witness and Witnesses produced'. Furthermore, they were 'sworn to secrecy' in undertaking their duties and could not 'publish disclose or make known' the contents of the documents.[5] As such, Commissioners had to swear the witnesses,

[3] TNA C21, C22, 'Court of Chancery: Six Clerks Office: Country Depositions, Series I & II', C23, 'Unpublished Depositions', stable URL: https://discovery.nationalarchives.gov.uk/browse/r/h/C3582/first/C3582/C5485733 accessed 23/1/2020.
[4] By cross-referencing pleadings with the country depositions catalogue 16 references survive. However, because of the laconic online description, it is only possible to ascertain whether the named plaintiff and defendant are the same as in an established bankruptcy case by reading the document itself. As such, 6 of these sources have been excluded.
[5] The commissioners' oath and the clerks' oath were written on a small piece of parchment and attached to the top left of the interrogatories and depositions. Many of these oaths have not stood the test of time as they can

privately examine them according to the interrogatories provided by each side, supervise the recording of witness statements by the clerk, and have the final documents sealed and returned to the court. The selection and rejection of commissioners was an important process for competing parties, as commissioners would direct the clerks in the transcribing of answers. This could be of great advantage to a party in the wording of the deponent's evidence to the sense of the commissioner. Churches has shown the tactics involved in selecting commissioners within a cause, as references to 'kindness', 'friendship', their 'ability' as a commissioner, or whether or not pressure could be applied to a commissioner were all taken into consideration. As such, the four remaining commissioners were either 'the least offensive … or the most inept' to either side, which was an important process in attempting to gain a favourable outcome.[6] Clerks were also required to swear an oath, whereby they would 'truly and faithfully and without partiality … take and write down transcribe and Ingross the Depositions of all and every Witness', being similarly sworn to secrecy.[7] While relatives and attorneys of the parties — and others with an interest in the outcome of the suit — were ineligible to serve as officers of the court, it is not surprising that certain individuals acted as both a witness and as a clerk or commissioner.[8] Examples can be taken from my sample, as in *Finch v Robinson* (1742), Stephen Ashby was first sworn as a witness for the plaintiff, and later sworn as a commissioner of the court; while in *Perrins v Gyles* (1736) Nathaniel Batty was sworn as a witness for the plaintiff before being sworn as a clerk.[9] This not only demonstrates the localised nature of proceedings, but also suggests that certain individuals acting as clerks or commissioners were familiar with the details surrounding the suit. Ultimately, either side knew it was important to get at least one

easily be torn or fall off. Legible examples of writs and oaths can be found at TNA, C11/2331/23, 'Haill v Camp' (1748).
[6] Churches, 'The Most Unconvincing Testimony', pp.210-212.
[7] TNA, C11/2331/23, 'Haill v Camp' (1748).
[8] Churches, 'The Most Unconvincing Testimony', p.210.
[9] TNA, C11/2323/13, 'Finch v Robinson' (1742); C11/1934/9, 'Perrins v Gyles' (1736).

commissioner who was sympathetic to their cause, or there was always a risk that the deposition would not be taken fairly.[10]

In theory, the procedure for examining witnesses in the country was clearly defined. Questions were to be posed verbally with the deponent answering all in sequence before hearing the next, being not allowed to leave the room until all had been completed. The clerk would then read the answers back and amend any drafts if necessary.[11] Throughout the seventeenth century, several Lord Chancellors found it necessary to publish collections of orders used in Chancery for the 'reforming of several abuses in the said court, preventing the multiplicity of suits, motions, and unnecessary charge to the suiters and for their more expeditious and certain course of relief'.[12] New interrogatories were not permitted to be inserted once examination had begun, and the court stressed the need for witnesses to be examined seriatim, taking one question after another in the order they were submitted, and have no knowledge of future questions until the one posed had been answered in full. This was done in order to prevent 'perjury and other mischiefs often appearing to the Court'.[13] Lord Nottingham introduced penalties for inserting new interrogatories and ordered that commissioners were, 'not to take upon them to judge what interrogatories are pertinent and what not, but must examine upon them as they find them'.[14] Again, this was designed 'to prevent perjuries, cautelous and craft depositions, false and fraudulent examinations, and many other such mischiefs and abuses'.[15] One seventeenth-century tract questioned the objectivity of officers of the court, suggesting there was 'too much foul practice used in the taking of *Depositions*, wherein many *Commissioners* and Clerks on both sides, for the most

[10] Churches, 'The Most Unconvincing Testimony', pp.210-212.
[11] Ibid, p.215.
[12] England and Wales Court of Chancery, *A Collection of Such of the Orders Heretofore Used in Chauncery* (London: 1649), further examples were printed in 1652, 1660, 1661, 1669 and 1676.
[13] Ibid, p.28.
[14] Heneage Finch, *Manual of Chancery Practice*, p.107.
[15] Ibid, p.110.

part Act rather as Parties or Agents for the persons concerned, then as becometh *honest indifferent persons*, according to the trust reposed in them by the Court'.[16] This manner of collecting evidence was clearly viewed as being open to abuse and manipulation by parties in a suit, and accusations of collusion, fraud, and bias were commonplace.

Contemporary common law advocates and subsequent legal experts have demonstrated their disdain for this method of gathering evidence. As William Holdsworth has concluded, 'it may safely be said that a more futile method of getting at the facts of the case, than the system in use in the court of Chancery from the seventeenth century onwards, never existed in any mature legal system'. This method was 'productive of the most unconvincing testimony at the greatest possible expense'.[17] The distinction between matter of fact and matter of law had become well established in England by the sixteenth century. As Sir Edward Coke insisted, juries were not to answer questions of law, while judges were not to answer questions of fact. However, in Chancery, the Lord Chancellor was to decide factual questions on the basis of depositions.[18] Ultimately, it was the interrogatories and their subsequent answers which very often formed the basis of legal judgement. Upon completion, interrogatories and depositions were attached alongside a copy of the commissioner's oath, the clerk's oath, and a formulaic writ naming the assigned commissioners, stating the date of the examination and the date by which the sealed documents would need to be returned to the court.[19] However, there was also a clear disparity between the ideal manner in which to record depositions and the actual

[16] Philodemius Philostratus, *The Seasonable Observations on a Late Book Intitvled A System of the Law* (London: 1654), p.21.
[17] Holdsworth, *A History of English Law*, vol.9, p.353; this quote was utilised as a title for Christine Churches' article discussing country depositions in Chancery, Churches, 'The Most Unconvincing Testimony', pp.209-227, full reference at note.91 in the Introduction to the thesis.
[18] Barbara J. Shapiro, *A Culture of Fact: England, 1550-1720* (Ithaca: Cornell University Press, 2000), p.11; see also Barbara J. Shapiro, *Probability and Certainty in Seventeenth-Century England: A Study of the Relationship between Natural Science, Religion, History, Law, and Literature* (Princeton: Princeton University Press, 1983), esp. ch.5.
[19] Writs were written in Latin before 1733 and English thereafter. The date for returning documents varied but was usually between two to three weeks after a completed deposition.

practice, as the strict regimen outlined above was rarely followed so precisely. Few deponents answered every question, and several chose to answer multiple questions at once. Further ambiguity arose by the fact that certain clerks specified when deponents failed to answer questions, with remarks such as 'cannot depose', while leaving other questions blank.[20]

In common law, supplementary questions could be posed to witnesses in a cross-examination, resolving conflicting testimony or undermining and discrediting a witness. As the rules of equity forbade such a practice, much care and skill went into the framing of interrogatories by parties or their legal representatives in order to elicit responses favourable to their cause. Only on the date of publication — the day when depositions in a case were read aloud and 'published' in open court — were both sides formally permitted access to the statements of each other's witnesses. This was the first chance for a party to officially see the interrogatories posed by the opposing side, and the answers elicited from deponents.[21] If individuals felt that their personal concerns were not being addressed, they could submit interrogatories separate from the rest of the party. For example, in *Carril v Savage* (1729), the defendant George Savage administered a distinct set of interrogatories consisting of three questions relating to a bond made between the bankrupt, William Hayne, and another defendant, Kenard Delabere. Clearly, Savage felt this avenue of investigation required special attention.[22] In the other set of interrogatories posed by the remaining five defendants, we see three questions all begin with the same phrase: 'were you concerned in the Execution of a Comission of Bankrupt awarded against William Haynes in the Title of these Interrogatorys named and in what capacity did you act therein'. Each question then explored a specific

[20] For an example of this, see TNA, C11/2331/17, 'Haill v Randall' (1746).
[21] Horwitz, *Exchequer Equity Records and Proceedings*, p.27.
[22] TNA, C11/1368/4, 'Carril v Savage' (1729), Interrogatories submitted by George Savage.

aspect of the bankruptcy, including a bond executed by the bankrupt, the date the bankruptcy was proven, and finally, whether the commissioners of the bankruptcy deposed witnesses on a specific sum of money.[23] While this is an extreme example, it was not uncommon for successive questions to contain an element of repetition. In this manner, parties were ensuring deponents had no opportunity to avoid answering questions on specific topics, and by addressing a question from a slightly different angle, they ensured that they attempted to cover every approach. One deponent, the solicitor John King, answered the above three questions simultaneously, further demonstrating the disparity between the ideal approach to examining witnesses set out by the court, and the day-to-day practice in the country.[24]

Throughout the seventeenth and eighteenth centuries, several advice manuals and treatises were published outlining the correct manner in which proceedings in Chancery should be undertaken. The extent to which such time and care went into framing interrogatories is best illustrated by two such publications that fall either side of the period under examination. The first is William West's *Symboleography*, a general practical treatise on English law under its several divisions.[25] This publication was extremely popular and came to be regarded as a work of legal authority. First published in 1590, the new edition of 1592 was reissued with further corrections eleven times between 1594-1647, while the second part of the new edition began in 1593 and was again reprinted a further ten times between 1594-1641. N. G. Jones has described the work as 'the first printed systematic treatise on the writing of legal instruments, including not only precedents in conveyancing but also of indictments and proceedings in Chancery'.[26] West outlines the process through which interrogatories should be devised by parties, depositions should be transcribed by clerks, and how commissioners

[23] Ibid, Interrogatories submitted by William Hodges, Elizabeth Wood, Kenard Delabere, William Baggoll, and Frances Haynes.
[24] TNA, C11/1368/4, 'Carril v Savage' (1729), Deposition of John King.
[25] William West, *The Second Part of Symboleography* (London: 1627).
[26] N. G. Jones, 'West, William (c.1548–1598)', *ODNB*.

should oversee the process. It is striking that the appearance of Chancery depositions throughout this period aligns neatly with West's practical advice, which is charted in detail below.

The second source is the anonymous 330-page advice manual, *A Collection of Interrogatories for the Examination of Witnesses in Courts of Equity,* first published in 1775, with a second edition the following year, and third edition in 1791. The author, 'An Old Solicitor', specifies 280 circumstances for framing interrogatories, boasting '*It is now only necessary to observe that the rapid sale of the first Edition is a proof of the utility of such a collection. To this Edition there are a considerable number of additions, which must render the work still more useful*'.[27] The practical nature of the publication as well as the author's experience and expertise are set out in the preface:

> The following Collection has been made out of many hundred draughts of Interrogatories, settled by some of the most eminent counsel, many of which the compiler kept by him in the course of his practice in the courts of Chancery and Exchequer; and the rest were furnished by several attorneys and solicitors of his acquaintance. And although it may possibly be objected, that the proofs in every cause must be adapted to its own particular circumstances, and that thereof there is no occasion for precedents of interrogatories; yet I think there is no weight in that objection.[28]

The similarities in the way in which these two documents — originally published some 185 years apart — set out the correct manner of framing the opening and closing interrogatories demonstrates the formulaic nature of Chancery depositions during this period. While the exact wording may differ slightly from one interrogatory to the next, nearly every bankruptcy deposition was initiated and concluded in the same way, as set forward in *A Collection*:

[27] *A Collection of Interrogatories for the Examination of Witnesses in Courts of Equity. As Settled by the Most Eminent Counsel*, third edition (Dublin: 1791), preface.
[28] Ibid, preface.

> *First Interrogatory.*
> Do you know the parties, complainants and defendants, in the title of these interrogatories named, or any, and which of them; and how long have you known them, or any, and which of them respectively? Declare the truth, and your knowledge herein
>
> *Last Interrogatory*.
> Lastly, Do you know of any other matter, or thing, or have you heard, or can you say any thing touching the matters in question, in this case, that may tend to the benefit and advantage of the complainant [or defendant] in this cause, besides what you have been interrogated unto? Declare the same fully and at large, as if you had been particularly interrogated thereto.[29]

These examples were suitable for all cases at the depositional stage of proceeding, but a case involving bankruptcy may have specified in the first question how the parties knew the bankrupt if he were not named as a party in the cause. Where interrogatories and depositions survive in full, deponents' answers' can easily be cross-referenced to the original questions, enabling an understanding of how certain individuals navigated specific questions via the responses they gave. Yet, even when only interrogatories or depositions survive, these can be compared to similar documents in separate cases. We have already seen in the first chapter how the increased formalisation of the court actually enabled a greater expression by the composers of bills of complaint and their subsequent answers. This approach can be further extended in this chapter, as witnesses were provided a platform, and granted a wide scope of expression, to discuss a particular failure. Indeed, by paying close attention to the procedure outlined above, it becomes clear that several witnesses were not directly involved in a commission of bankruptcy, and were instead being examined upon a specific aspect of the bankrupt's life or failure. However, before moving on to the cases themselves, it is worth analysing how scholars have utilised such narrative constructions in their research.

[29] Ibid, pp.1-2.

Secondary Scholarship and the 'Unique Voice' of Deponents

When discussing narrative construction and the mediated nature of oral testimony within depositions, scholars routinely reference Natalie Zemon Davis' ground-breaking work on pardon tales in sixteenth-century France. Davis concludes that despite the legal process governing their construction, the letters of remission tendered by the supplicants 'are one of the best sources of relatively uninterrupted narrative from the lips of the lower orders', and reflect, 'where the documents allowed it, the supplicant's own language and ordering of events'.[30] In a similar manner to pleadings, depositions can therefore take the shape of 'fictional' narratives constructed not only to reflect cultural norms and values, but also inform historians of actions and words that their authors hoped would be convincing — or at least believable — to the authority of the court.[31] Building on the work of Davis, Malcolm Gaskill has shown how court records 'provide practical contexts in which popular mentalities can be explored not just as abstract structures, but ideas in action'.[32] While depositions cannot allow us to ascribe specific texts to the attitudes of individual deponents, they can demonstrate the way in which popular narratives were used to illustrate such norms: 'But whether or not witnesses actually experienced the things they said they did is largely irrelevant; they may well have done, but as long as testimony remained consistent with local beliefs and ideals, even blatant lies might hold moral truth and the ends would justify the means'.[33] As Steve Hindle has shown, legal fictions of this kind, 'might disclose verisimilitude or moral truth, rather than verifiable accounts of historical happenings', instead providing evidence of what was considered plausible and defensible in a wide range of circumstances.[34] In this manner,

[30] Davis, *Fiction in the Archives*, p.5, p.21.
[31] Hindle, '"Bleedinge Afreshe"?', pp.224-245.
[32] Malcolm Gaskill, 'Reporting Murder: Fiction in the Archives in Early Modern England', *Social History*, vol.23, no.1 (1998), pp.1-30, p.4.
[33] Ibid, p.16.
[34] Hindle, '"Bleedinge Afreshe"?', p.237.

legal evidence can be utilised in order to illuminate widely held attitudes and beliefs within early modern society.

However, it seems that as Davis' insight becomes repeated and reapplied, such 'fictions in the archives' can only be understood in reference to postmodernist assumptions about subjectivity and narrative. Depositions were obviously not an unmediated account of experience, and as Lena Orlin has argued, 'with multiple witnesses presenting competing accounts, what "actually" happened on such occasions will almost always be a mystery'.[35] Yet, as historians now routinely approach these sources as 'fictive', there is a danger this not only undermines the value of incidental details attached to the narrative, but more significantly, leaves depositions strangely detached from the deponents who provided them.[36] Throughout Chancery depositions, it is fair to conclude that the answers of some deponents to the same question are interchangeable. Yet, at the same time, there is an individuality about certain answers which cannot be attributed to the formulaic nature of the legal process. Undertaking archival research in a range of ecclesiastical jurisdictions, Joanne Bailey succinctly concludes, 'Simply put, different people sound different'.[37] Ultimately, while the records of litigation do not provide a path to directly accessing early modern speech, they do provide us with myriad observations of the manner in which individuals formulated arguments within a legal setting.[38] Within these documents, individual narratives concerning credit, debt, and bankruptcy can be accessed, but it is important to remember that such narratives were created through the legal processes outlined above. However, this approach

[35] Lena Cowen Orlin, *Locating Privacy in Tudor England* (Oxford: Oxford University Press, 2007), p.153.
[36] Shepard, *Accounting For Oneself*, p.8.
[37] Bailey, 'Voices in Court', pp.392-408; p.393; Joanne Bailey, 'Breaking the Conjugal Vows: Marriage and Marriage Breakdown in the North of England' (University of Durham: Unpublished PhD thesis, 1999).
[38] Shepard, *Accounting For Oneself*, pp.8-9.

can raise certain methodological issues, and it is worth charting how historians have utilised depositions in an attempt to overcome such problems.

In Frances E. Dolan's recent and hugely influential book, *True Relations: Reading, Literature, and Evidence in Seventeenth-Century England*, she claims that historians 'who describe legal depositions as "fictions" or "stories" do so in order to acknowledge their limitations as evidence'.[39] Dolan goes on to suggest that a number of scholars make disclaimers about the highly-mediated nature of court depositions, and then quickly discard them in order to utilise the document in whichever manner they see fit. Phrases such as 'nevertheless' or 'nonetheless' are widely used, suggesting 'many of us feel that we must suppress our knowledge of evidentiary problems to get on with the work at hand'.[40] Dolan shows that because of the complexities surrounding the process in which depositions were created, scholars who rely on them often accept that they are 'mediated' but privilege them as providing unique access to early modern 'voices'.[41] In an attempt to overcome such mediating difficulties, and access unique voices, scholars undertake a variety of strategies. For example, when scholars quote from depositions and remove legal formulae — often by replacing 'this examinant' or 'this deponent' with 'he' or 'she' — they are doing so because they feel that such formulae distracts the modern reader.[42] Explanations for this process are usually hidden away in notes, and rarely given a full and detailed discussion. Mirandor Chaytor states, 'narratives have been returned to the first person singular', while Garthine Walker repeats the phrase and further explains, 'examinations, depositions and petitions are

[39] Frances E. Dolan, *True Relations: Reading, Literature, and Evidence in Seventeenth-Century England* (Philadelphia: University of Pennsylvania Press, 2013), pp.25-26; for the degree of influence and the range of debate this publication has encouraged, see the special edition, 'Women Negotiating the Boundaries of Justice in Britain, 1300–1700', *Journal of British Studies*, vol.58, no.4 (2019), pp.677-804.
[40] Ibid, pp.25-26.
[41] Ibid, p.113.
[42] Ibid, pp.121-122.

rendered in the first rather than the clerical third person'.[43] Bernard Capp simply states he has 'chosen to avoid technical terms and modernize quotations in order to make the social and cultural world of our ancestors more readily accessible'.[44] Finally, Laura Gowing explains that 'legal forms have been removed from this quotation for clarity'.[45] These are attempts to return to a supposed pure form of a first-person narrative prior to the mediation of a clerk. While their intention is to obscure the reader's awareness of the clerk, this raises serious epistemological questions, as their final outcome is a creation in and of itself, rather than a return to origin.[46]

Such discussions and attempts to return to first-person narratives centre on the reliability of the clerk and the accuracy of transcriptions. Gowing has concluded that the scribes in the consistory court 'added to the everyday speech of litigants the conventional legal uses of Latin and English that made up the court's language', acquiring a 'style that was virtually uniform across the country, and across several centuries'. Ultimately, 'clerks wrote, making a lengthy, clumsy, but technically unimpeachable statement'.[47] Gowing goes on to quote a section of the deposition and italicise where she feels the clerk had altered the original statement, attempting to draw a clear distinction between the deponent's first-person narrative, and the clerk's additions. Yet, this disaggregation of original speech and clerical alteration is not as definitive as Gowing claims. Indeed, in a somewhat contradictory manner,

[43] Miranda Chaytor, 'Husband(ry): Narratives of Rape in the Seventeenth Century', *Gender and History*, vol.7, no.3 (1995), pp.378-407, p.401, n.1; Garthine Walker, 'Rereading Rape and Sexual Violence in Early Modern England, *Gender and History*, vol.10, no.1 (1998), pp.1-25, p.20, n.4; Garthine Walker, *Crime, Gender and Social Order in Early Modern England* (Cambridge: Cambridge University Press, 2003), p.xv.
[44] Bernard Capp, *When Gossips Meet: Women, Family and Neighbourhood in Early Modern England* (Oxford: Oxford University Press, 2003), p.vii.
[45] Laura Gowing, *Common Bodies: Women, Touch and Power in Seventeenth-Century England* (New Haven: Yale University Press, 2003), p.210, n.1.
[46] For a more detailed discussion, see Dolan, *True Relations*, pp.121-128.
[47] Gowing, *Domestic Dangers*, pp.45-46.

Gowing acknowledges the mediated nature of depositions, while still advocating their accuracy:

> The clerks' records of witnesses' answers represent, then, a mediated, rearranged, and possibly rewritten version of the real words they heard. While they cannot be taken as a reliable transcription of oral narrative, many testimonies are notably individual and appear to be at least partly verbatim reports; in them, the formulaic phrases of the clerical style mingle with words and phrases that look as if they were remembered, and recorded, in their original detail.[48]

Gowing suggests that 'faithful reporting of words was both possible and important … clerks were well aware of the vital importance of establishing precisely which words were spoken and which were not'.[49] Through this approach, Gowing concedes that depositions are a collaborative effort, but still promulgates the accessibility of first-person narratives. As the final depositions have maintained their accuracy, Gowing believes that through the process of removing complex legal formulae, we can recreate the stories of the deponents and access their unique voices. Gowing finally concludes that the depositions that survive are 'the product of several competing and overlapping voices, are both individual and typical, innovative and repetitive'.[50] This last statement seems to render the previous investigation into the accuracy of recording redundant, and further highlights the necessity of acknowledging that we are interpreting written documents that have survived. Indeed, by stating at the outset that these documents contain 'competing and overlapping voices', we are able to move away from the great time and effort placed into attempting to access authentic voices. Instead, we should accept that the *voice* that we *hear* has been created by the court — and the people utilising the court — under examination.

[48] Ibid, pp.47-48.
[49] Ibid, p.46.
[50] Ibid, p.58.

In a similar manner to Gowing, Lawrence Stone, working on the ecclesiastical court of Arches, suggests that we should be attuned to the role of legal experts in coaching witnesses. For Stone, 'what gives the game away is when a string of witnesses use exactly the same adjectives to describe a character, or exactly the same words to express admiration or dislike'. When this occurs multiple times within a deposition, it should alert us to the role of the clerk in shaping narratives.[51] Again, despite this commonality of the use of language and the mediated nature of recording, Stone insists that the result of transcription in the ecclesiastical courts, 'is a full, and sometimes more-or-less verbatim, account of what was said by dozens, or hundreds, of persons, protagonists, witnesses, lawyers, and judges, who gave evidence or argued a given case. As a result we can eavesdrop on the conversations of men and women of all sorts and conditions'.[52] For Stone, the accuracy of transcription allows the historian to recreate the early modern courtroom and almost act as a fly on the wall, retelling the stories they have overheard. Garthine Walker uses the same terminology as Stone, describing these accounts as being recorded 'more or less verbatim', while Miranda Chaytor goes even further, arguing that despite altering witnesses' statements — such as placing them in the third person — clerks 'wrote at the plaintiff's diction, changing nothing and omitting nothing. Or so the internal evidence of these narratives suggests'.[53] While it is impossible for the modern reader to check a clerk's accuracy, this last statement seems overconfident and rather unlikely, as accuracy must have varied from clerk to clerk, and certainly between jurisdictions.[54]

A further approach scholars take when discussing the highly mediated nature of depositional evidence is to advocate the need for supplementary material to overcome their perceived

[51] Lawrence Stone, *Road to Divorce in England 1530-1987* (Oxford: Oxford University Press, 1990), p.31.
[52] Lawrence Stone, *Broken Lives: Separation and Divorce in England 1660-1857* (Oxford: Oxford University Press, 1993), p.4.
[53] Walker, 'Rereading Rape and Sexual Violence in Early Modern England', pp.378-407.
[54] Dolan, *True Relations,* p.120.

weaknesses. Yet, this approach is again promulgated so that scholars can circumnavigate such interpretive problems and strengthen the qualitative value of their sources. James Obelkevich has stressed that this approach must be taken in order to 'hear the voice of the people' within legal records. Indeed, the laconic nature of English sources in comparison with their European counterparts, means that for Obelkevich, 'there will never be an English *Montaillou* or *The Cheese and the Worms*'.[55] Bailey suggests that while such interpretive problems do not make court records valueless, they still require supplementary material in order to 'allow a glimpse past the distorting influence of law to specific clients' voices'.[56] When discussing the difficulty in attempting to recapture the 'subjective dimension and meanings attached to going to law', Wilfrid Prest dismisses using equity depositions in isolation, as while such sources may seem potentially rewarding, the evidence was 'constrained by the demands of legal formalism'. As such, in order to 'penetrate beyond the silences and stereotypical formulations it is necessary to adopt a much more intensive approach, supplementing official court records with a variety of other — usually local — sources'.[57] This is a common criticism, and while scholars such as Christine Churches have utilised depositional evidence alongside local sources to remarkable effect, it seems that the problem highlighted above, is not really a problem at all.[58] Supplementary material can always be of use to a historian, but this should not be done in order to remove distorting obstacles from a central source base. Accepting that the legal institution acted as a means for a wide range of individuals to seek justice, as well as an agent which created narratives,

[55] James Obelkevich, 'Proverbs and Social History', in Peter Burke and Roy Porter eds., *The Social History of Language* (Cambridge: Cambridge University Press, 1987), pp.43-72, p.43.
[56] Bailey, 'Voices in Court', pp.393-394.
[57] Wilfrid Prest, 'The Experience of Litigation in Eighteenth-Century England', in David Lemmings ed., *The British and Their Laws in the Eighteenth Century* (Woodbridge, Suffolk: The Boydell Press, 2005), pp.133-154, p.142.
[58] Churches, 'The Most Unconvincing Testimony', pp.209-227; Christine Churches, 'False Friends, Spiteful Enemies: A Community at Law in Early Modern England', *Historical Research*, vol.71, no.174 (1998), pp.52-74; Churches, 'Business at Law', pp.937-954; Christine Churches, 'Some Figures Behind the Numbers: Going to Law in Early Modern England', in Wilfrid Prest and Sharyn Roach Anleu eds., *Litigation Past and Present* (Sydney, Australia: University of New South Wales Press, 2004), pp.44-58.

eliminates not only the need to 'glimpse past' the distorting narratives and access 'authentic voices', but also enables historians to undertake a fuller engagement with legal records.

There is a need to pay attention to the specific circumstances of the production of legal documents in order to fully understand their creation. While there were certain similarities in the process and procedure of collecting and presenting evidence to early modern courts, scholars either routinely highlight these similarities to make comparative analysis easier, or fail to adequately explain the complex differences between jurisdictions. The court of Chancery had specific rules governing how evidence was to be collected in the country, and while this regimen was not always followed as closely as possible, many aspects were unique to the court. These specificities alter the way the document was created and the manner in which we can interpret such sources. Indeed, returning to Natalie Zemon Davis' work, it needs to be stressed that Davis deals not only with a sixteenth-century foreign court, but with individuals presenting a judicial supplication in order to persuade the king and courts of the extenuating circumstances that would lead to a pardon. This document creation bears little or no resemblance to the variety of depositions that occurred throughout a wide range of local and central courts, as well as occurring at differing stages of a criminal or civil proceeding and across centuries of medieval and early modern examination.

As Dolan concludes, 'perhaps we might recast mediation as collaboration'.[59] This is certainly a more productive approach, but some caution should be exercised over the use of the word collaboration, which is seen as synonymous with such terms as 'cooperation' or working 'in partnership' with other parties. To an extent, this is true. It is clear from the previous section that several individuals worked together to create depositions. However, it cannot be said that these individuals were working towards the same goal or intended outcome, as they would

[59] Dolan, *True Relations,* p.118.

have had different, and often competing aims. As Dolan summarises, it is important to remember that clerks were not simply receivers of testimony who recorded accurately or otherwise, but rather shaped 'the statement before and as it is solicited, dictated, and revised'.[60] Similarly, parties and their legal representatives carefully formulated the questions, deponents responded to the questions posed, and clerks transcribed the answers; all of which took place within the overarching legal framework of the court. In this manner, we can never be certain as to who contributed what to the finalised narrative, presented to us in the written documents that survive. As such, we must analyse these documents in their entirety, which were created in collaboration with these individuals.

The Construction of Narrative in Depositions

When discussing the use of the law in early modern society, Christopher Brooks has suggested, 'the great thing about lawsuits is that, while they tell us about norms, they also show how people exploited, challenged or sought to alter them'.[61] In this manner, depositions can illuminate the way in which individuals chose to represent themselves and formulate narratives concerning individual failure within Chancery. This enables us access to the specificities of actions, attitudes, and emotional responses to financial failure, as well as establishing the accepted norms and values of the correct way to behave within the trading community. Despite focusing on document creation and interpretation, Chancery depositions are still rich in qualitative detail and contain fascinating individual narratives concerning

[60] Ibid, p.120.
[61] Brooks, *Lawyers, Litigation and English Society Since 1450*, p.189.

financial failure. How these narratives are created and utilised by witnesses in Chancery will be the focus of this section.

To begin with, it is worth briefly outlining the theoretical approach promulgated by the literary theorist Roland Barthes, who suggested that the reality of the past must be linked to a so-called 'reality effect', which is created by irrelevant details mentioned in the historical text. Barthes shows how the use of such descriptions — or 'notations' — contrast with the main outline of the story, which he labels 'predictive'. Barthes uses two examples to illustrate this point. The first is a statement by the French novelist Gustave Flaubert, who when describing a room occupied by Mme Aubain, includes the description of 'an old piano supported, under a barometer, a pyramid heap of boxes and cartons' that were present within the room. The second example comes from the French historian Jules Michelet. When recounting the death of Charlotte Corday, Michelet reported that before the executioner's arrival, she was visited by an artist who painted her portrait. Within this narrative, Michelet includes the detail that 'after an hour and a half, there was a gentle knock at the door behind her'.[62] Certain notations for Barthes were 'scandalous' from the point of structure as they perform no function and correspond only to a type of 'narrative *luxury*'.[63] In Flaubert's description, no purpose seems to justify reference to the barometer, and in Michelet's sentence, all that is really pertinent is the fact that the executioner came after the painter; all other notations — how long the sitting lasted, the dimension and location of the door — are useless in terms of structure. Barthes claimed that such notations in historical writing bear little or no link to the predictive argument: 'for just when these details are reputed to *denote* the real directly, all they do — without saying so — is *signify* it; Flaubert's barometer,

[62] Roland Barthes, 'The Reality Effect' reprinted in *The Rustle of Language*, translated by Richard Howard (Oxford: Basil Blackwell, 1986, originally 1968), pp.141-154.
[63] Ibid, p.141.

Michelet's little door finally say nothing but this: *we are the real*; it is the category of "the real" (and not its contingent contents) which is then signified'.[64] This theoretical approach of including detailed notations can be directly applied to early modern narrative construction, as witnesses — in collaboration with officers of the court, the parties in a suit, and legal representatives — sought to present their descriptions of past events in an informed, believable, and persuasive manner.

Building on the work of Barthes, Jonathan Porter has suggested that the detail and the specifics of a description become crucial elements for the activity or event that is being described. As such, vivid detailed descriptions can be used to increase the 'facticity of an account'.[65] Such descriptions, while adding nothing substantial to the claim or argument, can provide the reader with a sense of familiarity at the event being described, providing an impression of being present at such an event. Details can be produced and worked-up for their factual properties, which is a primary skill of novelists as they tell a story in a believable way.[66] Hayden White has promulgated the need to give historical facts coherence in order to present a plausible account of 'the way things *really* were'.[67] Again, utilising the example of a historian, White argues that the only tool available to contextualise data with meaning, 'of rendering the strange familiar, and of rendering the mysterious past comprehensible, are the techniques of *figurative* language'.[68] As such, plausible and believable accounts of the past can only be achieved by placing historical facts within a coherent narrative. As Porter concludes, an account of the past comes to seem factual and believable as it draws on a form that conforms to our narrative expectations; put simply, it seems 'right', 'well formed',

[64] Ibid, p.148.
[65] Jonathan Porter, *Representing Reality: Discourse, Rhetoric and Social Construction* (London: Sage Publications, 1996), p.117.
[66] Ibid, pp.117-118.
[67] Hayden White, *Tropics of Discourse: Essays in Cultural Criticism* (Baltimore, Maryland: John Hopkins University Press, 1978), p.122.
[68] Ibid, p.94.

'coherent'.[69] It is within this theoretical context that the formulation and presentation of the recollection of failure are utilised within Chancery depositions. As such, it is worth analysing two cases, and particularly the accounts of two witnesses, in order to illustrate how such narratives have been constructed within the overarching framework of the court.

In *Hoar v Darloe* (1737), both sets of depositions centred on the discovery of a bag of gold in a family home in Penzance, Cornwall in 1737. The plaintiffs were the assignees of the bankrupt, Thomas Darloe, and the defendants were the bankrupt's brother, William Darloe and his wife Susannah. Thomas Darloe previously lived in the house with his wife, Ellen, who had subsequently died. After Ellen's death, the bankrupt's brother William took over Thomas' trade and moved into the house. Mary Douglass, who was originally a servant for Thomas, stayed on to clean the house for William, and was the individual who discovered the bag of gold. While the point at issue seems to be concerned with who held legal ownership of the gold for the purposes of the post-bankruptcy distribution of goods, what is fascinating is the detail that goes into the description of finding the bag by Mary Douglass. The plaintiffs asked whether any person found any gold or silver in a 'purse pocket or Fobb' in a chest of drawers in the bankrupt's house. The defendants asked a similarly straight forward question: 'Do you know any thing touching a bag of money being found in an old Chest of Drawers … and when and by whom was the same found and how much Money was Contained in the Said Bag'.[70] Mary Douglass' answer to the defendants' question is worth quoting at length:

> on Drawing out the Drawers which were First in Number in Order to Clean the same this Deponent Discovered a Bag of Money lying between the under most Drawer but one upon the Bottom that Parted that same Drawer from the under one it being a false Bottom which Bag being made of yellow Canvas and about the length of a Quarter of a Yard was Pinned with Two Pins One of which this Deponent taking out in order to Open the Bag

[69] Porter, *Representing Reality*, p.170.
[70] TNA, C11/412/20, 'Hoar v Darlow' (1737), Interrogatories submitted by John Hoar and John Smith; Interrogatories submitted by William Darloe and Susannah Darloe his wife.

> Found the same to be Gold which by the Bulk and Weight of it this Deponent Doth verily Believe was more than Two hundred and Fifty Pounds and this Deponent Crying out that she had Found a Bag of Money the Defendant Susannah then being in the same Room with the Defendant William her husband Drinking Tea or Coffee she the Defendant Susannah Snatche the said Bag out of this Deponents hand and lockt up the same instantly in a side Cubbart in the same Room where they usually kept their Cash but at the time of taking it from this Deponent as aforesaid Pretended that the said were Leads such as are usually Worn in Womens Gowns Sleeves tho at the same time when this Deponent had Pulled out one of the Pins a Broad piece of Gold Tumbled out of the said Bag and had Fallen to the Ground If the Defendant Susannah had not Catcht it in her hand.[71]

Mary goes on to detail the contents of the bag, which were all gold, and some 'was Old Coin some Picies Thick, some Thin, some Broad, some Small … that the said money was not tarnished but looked very bright and seemed to this Deponent not to have lain above a year in the place where the same was found'. To conclude the narrative, Mary claimed that she and her husband William then retired to their bedroom, and about ninety minutes later they came down the stairs, and 'through a small hole in the wall', they spied the Defendants William and Susannah Darloe examining the money. However, when they entered the living room, Susannah 'Flung her Apron over the bag' to conceal the contents, 'whereupon this Deponent told the Defendant Susannah she need not Throw her Apron over it to hide it, for that she this Deponent saw it was all Gold and that she would Swear to it'.[72] This deposition provides a specific example of how a witness chose to present themselves, as well as their reconstructed memories of past events, in a legal setting.

We have seen in the previous chapter how pleadings needed to be carefully constructed to demonstrate — or refute — that the case fell within the jurisdiction of a court of equity, and that the defendant(s) had acted against conscience. However, the depositional stage of proceeding allowed a far more expansive and detailed narrative account of specific historical

[71] Ibid, Deposition of Mary Douglass.
[72] Ibid; for an overview of the mass of literature on the convention and legitimacy of peep holes, see Dolan, *True Relations*, p.146.

events. In many ways the court actually encouraged this process, as witnesses were provided a platform to give detailed and descriptive accounts of past events, so that the judge could understand the background to a case and render a fair and equitable judgement. This can again be seen in the second case, entitled *Hopkins v Newton* (1718), which concerned the bankruptcy of John Hopkins, an ironmonger from Birmingham.[73] From a summary of the depositions, it appears that bailiffs went to Hopkins' house on several occasions, but were simply unable to gain access to the premises as Hopkins' wife and servants diligently kept the doors bolted and locked. Indeed, two years prior to absconding, Hopkins was previously committed to Warwick jail for debts and stayed there for three to four months. Fearful of a return, it seems that Hopkins either kept indoors or successfully absconded for nearly two years. In her deposition, Anne Chatwin, who was a tenant of Hopkins, stated that the bankrupt kept house, absconded, or 'went in and out of the same privately and very early or very late' to avoid being arrested. Furthermore, Hopkins' doors were 'diligently watch'd and taken care of by his wife and servant maid', while Hopkins' wife spoke 'with Tears' that she feared 'all they had would be seized'.[74] Chatwin continued her deposition and stated that on one occasion, and in order to avoid the bailiff Richard Banner, Hopkins:

> Ran out of his own dwelling house into this Deponent's dwelling house and went up Stairs, and Immediately afterwards the said Richard Banner came to this Deponent's door enquiring for the said Hopkins. And the said Banner, in a Violent manner burst and break open the door of this Deponent's dwelling house and came in and ran upstairs after the said Hopkins and brought him down into the Kitchen.[75]

Upon pressing the bailiff as to whether Hopkins had been arrested, Chatwin deposed that Banner had forgotten the arrest warrant and so shortly after left her house. Again, this deposition demonstrates an extremely detailed account of what appears to be a lucky escape

[73] TNA, C11/1330/22, 'Hopkins v Newton' (1718).
[74] Ibid, Deposition of Anne Chatwin.
[75] Ibid.

for the bankrupt. However, this example also illuminates specific aspects of how a bankrupt was seen to behave during their failure. Chatwin provides an insight into the manner in which a bankrupt had to securely lock and bolt their doors, as the bailiff seems to have managed to gain access to Chatwin's house with ease, compared to the numerous attempts made on Hopkins' house. Even though Hopkins has successfully managed to avoid his creditors for over two years, this deposition demonstrates the constant threat to a bankrupt of arrest, as creditors continued to press debtors for their debts.

What is clear in both of these cases, is that two women — one a servant and one a tenant — were called as witnesses to provide their own account of specific historical events relating to a sole bankruptcy. Indeed, in both of these examples, the witnesses were not named as parties in the suit, and neither were they explicitly mentioned as creditors or debtors within a commission of bankruptcy. As such, while they clearly knew and were acquainted with the bankrupt, their narrative is not presented in a legal form, for the benefit of either the plaintiffs or the defendants. The methodological approach put forward in the previous section, means that it is not necessary to debate whether or not it is Mary Douglass', or Anne Chatwin's authentic, spoken, recollection of events we are interpreting. Instead, while there are clearly individual words, sentences, recollections, and descriptions encompassed within these documents, we can analyse and interpret them as being collectively created by the people involved in the legal process, and presented to us in the documents that survive. With this in mind, the next section analyses the specific use of language, particularly relating to financial failure, in greater detail.

Narratives of Bankruptcy and Insanity in Depositions

During this period, Dolan has claimed that 'legal culture was popular culture', as legal terms were part of the vocabulary through which individuals understood the world.[76] In a similar manner, Christopher Brooks has suggested that the law — like religion — was one of the principal discourses through which early modern people conceptualised society. This conceptualisation was so extensive that, for Brooks the English common law was 'essentially the creation of the wider community'.[77] As such, the language chosen and presented in Chancery depositions were particular and evocative. By analysing the words and phrases used in the formulation of narratives concerning economic failure, we can begin to illuminate attitudes towards bankruptcy within the wider community. In this manner, there is a striking similarity between the language used to denote economic failure and discourses of insanity during this period. Individual words and phrases were utilised to denote both a decline into financial failure, as well a deterioration of mental health. Analysing the use of these specific words and phrases can inform us of how such judgements were made by wider society.

In discussing discourses of insanity, Michael MacDonald has argued that by the early seventeenth century, the language of madness had become 'rich and pervasive … words and phrases about insanity were part of the common coinage of everyday speech and thought, negotiable everywhere in England and not restricted to a small circle of medical and legal experts'.[78] This demonstrates that the language surrounding a common theme such as madness had been disseminated into popular consciousness. The early modern period exhibited a specific and deliberate use of language, so much so, that to ramble, speak too quickly, quietly or loudly were tell-tale signs of mental disorder. MacDonald's case study of

[76] Dolan, *True Relations*, p.120.
[77] Brooks, *Law, Politics and Society in Early Modern England*, p.i.
[78] Michael MacDonald, *Mystical Bedlam: Madness, Anxiety, and Healing in Seventeenth Century England* (Cambridge: Cambridge University Press, 1981), pp.122-123.

the medical practitioner Richard Napier has shown how financial hardship could directly lead to mental anguish, as somewhat unsurprisingly, 'debt was by far the greatest single source of anxiety'.[79] Indeed, it is interesting to see MacDonald utilise economic metaphors to discuss popular culture and the narratives surrounding insanity, as economic and mental decline were closely connected. Building upon this, it was the observations and anxieties of family members, neighbours, and the wider community which formed the social structure and the defining process of *both* lunacy and bankruptcy. While the taint of madness may have been more severe, the attachment of the label 'mad' or 'bankrupt' had a seriously detrimental effect on a person's social reputation and standing within the community. As Allan Ingram has concluded, 'to be taken for a madman is the ultimate in alienation, the most damaging of social stigmas, the most personally invasive of definitions, potentially the most remote and inaccessible of narrative positions'.[80] Similarly, the ill-effects of being declared a bankrupt are well known for this period.[81] Indeed, the extent that this is the case can be seen in the surprisingly large number of defamation suits brought throughout the sixteenth and seventeenth centuries, whereby a plaintiff was seeking damages from a defendant for incorrectly, and publicly, calling them a bankrupt.[82]

In terms of legal process, we have seen how a debtor had no control over the initiation of a commission of bankruptcy, while those with perceived mental disorders had a similarly limited control over their fate. Discussing the committal process to early modern Bethlem, Jonathan Andrews has shown how 'it was not the insane, but their friends and parishes' who

[79] Ibid, p.67.
[80] Allan Ingram ed., *Voices of Madness: Four Pamphlets, 1683-1796* (Thrupp Stroud, Gloucestershire: Sutton Publishing, 1997), p.xiv.
[81] See Daniel Defoe, *The Complete English Tradesman* (London: 1726).
[82] See Lawrence M. Friedman and Thadeus F. Niemira, 'The Concept of the "Trader" in Early Bankruptcy Law', *Saint Louis University Law Journal*, vol.5 (1958), pp.223-249.

negotiated for their admission.[83] As the Restoration poet Nathaniel Lee declared upon his committal, 'they said I was mad; and I said they were mad; damn them they outvoted me'.[84] Mental disorders manifest themselves in their victims' relationships with other men and women, and as MacDonald has succinctly stated, 'ever since antiquity, insanity has been defined by experts but discovered by laymen'. When medical experts were called, this was largely at the request of the wider community and often in order to corroborate the popular diagnosis.[85] Those declared insane and those declared bankrupt had their situation determined to them from without, and the build-up to such determinations could follow similar paths.

Within Chancery depositions, we are often confronted with an individual bankrupt who had fought long and hard to remain solvent. This process of economic decline is often mirrored in discourse concerning insanity, as the terms surrounding madness were used to refer to a build-up of behavioural signs rather than a specific action.[86] Undoubtedly, there were examples of single incidents leading to cases of insanity, but more commonly madness was perceived as an ongoing decline. As one eighteenth-century proverb stated: 'one mad action is not enough to prove a man mad'.[87] This concept of a decline into madness is perhaps best illustrated through a discussion of melancholy, which was seen as a type of madness or unreason. While it took a variety of forms and had near infinite descriptions and manifestations, its most characteristic features were fear and sadness.[88] However, there remained a concern that a sound mind could decline into a state of melancholy, and finally

[83] Jonathan Andrews, 'The Politics of Committal to Early Modern Bethlem', in Roy Porter ed., *Medicine in the Enlightenment* (Amsterdam: Editions Rodopi B. V., 1995), pp.6-63, pp.42-43.
[84] Quoted in Roy Porter, *Mind-Forg'd Manacles: A History of Madness form the Restoration to the Regency* (London: The Athlone Press, 1987), p.2.
[85] MacDonald, *Mystical Bedlam,* p.113.
[86] Peter Rushton, 'Lunatics and Idiots: Mental Disability, the Community, and the Poor Law in North-East England, 1600-1800', *Medical History*, vol.32, no.1 (1988), pp.34-50, p.37.
[87] Thomas Fuller ed., *Gnomologia: Adagies and Proverbs; Wise Sentences and Witty Sayings, Ancient and Modern, Foreign and British* (London: 1732), p.160.
[88] Angus Gowland, 'The Problem of Early Modern Melancholy', *Past and Present*, vol.191, no.1 (2006), pp.77-120, p.97.

into lunacy. In order to prevent such a process, the religious writer Richard Baxter advised the melancholic to, 'AVOID *all unnecessary Solitariness, and be as much as possible in honest cheerful Company*. You have need of others, and are not sufficient for your selves'.[89] Excessive solitude was seen as a deviation from the accepted norms of society, alienating individuals from their community. Throughout this period, several physicians continued to warn against the ill-effects of sedentary and solitary behaviour. George Cheyne for example, cited 'an unactive, sedentary, or studious life' as a major cause of 'the Frequency of Nervous Disorders'.[90] John Haslam noted how even while incarcerated, mental patients could develop a type of 'ideotism' from being 'silent and gloomy inhabitants of the Hospital' who had 'avoided conversation, and sought solitude'.[91] Paradoxically, to prevent the onset of madness, one had to remain sociable and an active part of society; yet, once an individual had breached those societal norms and were seen as a threat to the status quo, they were to be removed from public view: out of sight and out of mind. But again, parallels can be drawn to bankruptcy. As was shown in the previous chapter, a reputable trader would need to be seen to be acting in a public manner at certain agreeable times. As such, a private and solitary individual — whether absconding from creditors, or showing signs of melancholy — was seen to be disrupting socially accepted norms.

When madness breached the individual and private sphere and entered the public domain, this was seen as a direct threat to public order.[92] One example that illustrates this point is individuals not being dressed appropriately. Indeed, being in a state of undress was both an attack upon established social hierarchies, as well as being a clear signifier of madness during

[89] Richard Baxter, *The Signs and Causes of Melancholy* (London: 1716, Originally 1670), p.81.
[90] George Cheyne, Quoted in Jonathan Andrews and Andrew Scull, *Customers and Patrons of the Mad-Trade: The Management of Lunacy in Eighteenth-Century London* (Berkley: University of California Press, 2002), p.128, n.38.
[91] John Haslam, Quoted in Allan Ingram, *The Madhouse of Language: Writing and Reading Madness in the Eighteenth Century* (London: Routledge, 1991), p.40.
[92] Andrews, 'The Politics of Committal to Early Modern Bethlem', p.16.

this period. Jonathan Andrews has shown how commonly the mad poor were represented in this manner within contemporary literature. This was done to portray the mad as an inferior species of person, exhibiting a sense of 'otherness' and moral degradation. Being depicted in such a way could also be seen as a direct appeal to charity and relief, and a sign of their personal neglect, or neglect by others, equating madness with a 'loss of material and social status'.[93] Nicholas Rowe's popular play, *The Tragedy of Jane Shore* — first performed in 1714 — depicts both the decline into madness and the representation of this decline through inappropriate appearance.[94] Two female characters are gradually brought to the brink of insanity through suffering and jealousy, reaching its climax in the final scene where Jane Shore enters, with 'her hair hanging loose on her shoulders, and bare-footed'.[95] As such, several depictions illustrate a descent from better days to tatters. Clothing not only held symbolic value as a marker of social standing, but was also considered a valuable financial resource as something that could quickly and easily be pawned, sold or traded.

Having established the similarities in the use of language surrounding madness and bankruptcy, we can now turn to the cases to illustrate how such narratives were composed and utilised in depositions. To begin with, the notion of voluntary or involuntary withdrawal from social ties can be directly attributed to bankruptcy and economic failure. Most obviously, this would take the form of debtors' prison or a debtors' sanctuary. However, within my sample, there are only two references to previous incarceration or occupancy within a sanctuary. We have previously seen in *Hopkins v Newton* how the bankrupt John Hopkins was committed to Warwick jail for several months and was fearful of a return, while

[93] Jonathan Andrews, 'The (un)Dress of the Mad Poor in England, c.1650-1850. Part I', *History of Psychiatry*, vol.18, no.1 (2007), pp.5-24, p.12; see also Jonathan Andrews, 'The (un)Dress of the Mad Poor in England, c.1650-1850. Part II', *History of Psychiatry*, vol.18, no.2 (2007), pp.131-15.
[94] For an in-depth discussion of the representations of madness in this play, see Ingram, *The Madhouse of Language*, pp.86-87.
[95] Nicholas Rowe, *Jane Shore: A Tragedy, In Five Acts* (1714) Act V, Scene II.

in *Hope v Salmon* (1724), there is a cursory mention of the bankrupt taking refuge in the Mint, Southwark.[96] More common were mentions of absconding or keeping house in order to avoid creditors. This is not surprising, as we have already seen, debtors needed to commit an act of bankruptcy in order for a commission to be taken out. It was at this point when a bankrupt was seen to upset the social order by removing themselves from the public trading community and concealing their activities. Absconding or keeping house clearly violated the social conditions of normality, and was seen as the breaking point for the possibility of maintaining economic promises. Within my sample, eighteen suits mention acts of bankruptcy committed by the bankrupt, while sixteen explicitly mention the term absconding. Of these, the bankruptcy of Tobias Lambert — litigated across two suits — alludes to the psychological impact placed on the bankrupt.

The assignees in *Dodson v Denison* (1722) asked whether before 13 November 1719, Lambert did 'abscond Secret and Conceal himself' from any of his creditors who had endeavoured to 'Arrest him'. Depositions from Tobias Lambert, his wife Sarah, and their three children all confirm that Tobias ordered his family to deny entry to any of his creditors. When a family friend and 'perriwiggmaker' named Edward Brogden was deposed, he specified that on 15 November he went to see Lambert at his home, where he seemed very 'pensive and melancholly'. He realised that Lambert was experiencing severe financial difficulties, as he recalled that Lambert, 'at any time before had lost Ten or Twenty pounds usually told this Deponent of it they being so very Intimately acquainted'. However, according to Brogden, upon this occasion 'it was A Great deale worse, for that he had been Casting up his Books the week before and he Could not make both ends meet and also that he had received one or more threatening Letter or Letters from some or One of his Creditors at

[96] TNA, C11/1330/22, 'Hopkins v Newton' (1718), Deposition of John Hopkins; C11/2774/6, 'Hope v Salmon' (1724), Deposition of William Russell.

London', and might be forced to flee the next morning. While Lambert did not flee, Brogden estimated his debts to be approximately £2500, and under the strain of such pressures, Lambert fell 'Crying to this Deponent'.[97] Here, Lambert's mental anguish is portrayed alongside his decline towards financial failure. Like most traders of the period, it appears that Lambert was accustomed to dealing in credit and experiencing financial losses. However, it appears that at this time, Lambert was at breaking point. The combination of the awareness of the size and substance of his debts, coupled with increased and persistent demands for repayment, seem to have led Lambert to keep house and abscond in order to avoid demands on his shop. In this instance, Brogden's portrayal of bankruptcy can be seen as an ongoing decline in Lambert's economic, psychological, and emotional health.

Further depositions seem to confirm this description of Lambert's decline. In response to a question about the bankrupt's credit and reputation, Christopher Heblethwait, a saddler from Leeds, stated that when he entered Lambert's shop, the bankrupt's wife Sarah was working, but the pair failed to come to an agreement on the sale of certain goods. As such, Lambert entered the shop about nine o'clock with 'his Stockings untyed and his Cravatt Loose about his neck, and Sold to this Deponent the Goods'.[98] Hablethwait's decision to mention the state of Lambert's dress in his formulation of the bankrupt's credit and reputation is an interesting inclusion. Tobias' wife Sarah stated that leading up to her husband's failure, her husband kept himself concealed, and he 'only Sometimes peeped out into the Shop … But neither Stayed or Satt downe there as she Remembers, being afraid of an arrest or Dunn from Some of his Creditors'. Similarly, Sarah recalled a number of creditors coming to demand repayment, including a Robert Dennison, who was so outraged at her husband's failure to repay him, that

[97] TNA, C11/2762/22, 'Dodson v Denison' (1722), Deposition of Edward Brogden.
[98] Ibid, Deposition of Christopher Heblethwait.

he suggested Lambert 'had the devil in him'.[99] Tobias himself corroborates his wife's account, and further suggested that while he 'Sometimes did curiously look into his Shop' he did so 'but with fear of being arrested and made no long stay' and 'never appeared so publick in his trade as he did before'.[100] Henry Hall, a thirty nine year old cloth worker, recollected that prior to his demise, Lambert used to walk 'publickly before his shop Door in the street' and according to his usual Custom he would regularly 'shake this Deponent by the hand, and Desire him to walk into the house and Drink with him, which this Deponent did, and stayed with him two or three hours'. However, since his failure, this had become a rare occurrence.[101] Within these depositions, Tobias Lambert is depicted as not only voluntarily removing himself from social ties, by keeping house and absconding, but also as in a serious decline of his physical, economic, and mental health. The bankrupt is portrayed at his lowest point, as a desperate man and one who is separated from the accepted norms of society.

As well as links to discourses surrounding melancholy and madness, a broader notion of decline is presented throughout bankruptcy depositions in a variety of forms. Twelve cases refer to decline in terms of an individual's credit, trust, reputation or circumstances in some variant or another. It is worth analysing the specific words and phrases used in some of these suits, as they reveal the process of this decline in greater detail. In *Andrews v Vaughan* (1734), the plaintiffs asked whether between 1719-1721, the bankrupt did 'begin to sink in the world'. Of the deponents, the only pertinent response comes from Thomas Blayney, who suggested that between 1719-1721, the bankrupt held a 'very good creditable reputation', and it was not until 1729-1730, 'when it was reported he began to sink in the world'.[102] Firstly, the plaintiffs designate a three-year period in which the bankrupt began to decline, and while

[99] Ibid, Deposition of Sarah Lambert.
[100] Ibid, Deposition of Tobias Lambert, Tobias confirms that Robert Dennison said he had 'the devil' in him.
[101] TNA, C11/2769/14, 'Denison v Paine' (1722), Deposition of Henry Hall.
[102] TNA, C11/1931/3, 'Andrews v Vaughan' (1734), Deposition of Thomas Blayney.

Blayney does not agree with the time scale set by the plaintiffs, he does accept that the bankrupt's reputation began to 'sink' across two years. The use of the word 'sink' as set out in the interrogatory is interesting. According to the *Oxford English Dictionary*, the verb 'sink' has thirty two modern definitions, perhaps the most common being to 'become submerged in water' and to 'descend to a lower plane or level'.[103] During the early modern period, the term was utilised in relation to moral and ethical religiosity, and to sink in the world meant to lapse or degenerate into some inferior moral or social condition. Examples of this usage are manifold throughout this period, but a few examples highlight this point explicitly. Phillip Goodwin promulgated the need to act in a Christian manner throughout the entirety of the week, condemning those who were provident and diligent all week, 'yet decay and sink in the world' by not respecting the Sabbath.[104] In his *Caution Against Ill Company* (1705), James Ellesby preached against those who can see the correct path but choose alternatives: 'Christians who have all the Helps and Encouragements to become the *Best* of Men and excel all the World beside, should yet Sink and Degenerate beneath the *Basest* and *Vilest* of Mankind'.[105] Even within a secular setting, and when explicitly discussing finance, the term sink could still refer to a serious collapse of an individual's credit, reputation, and moral standing within the community. Using the example of a Captain Wilkinson, who had become impoverished and imprisoned due to his outstanding debts and poverty, one anonymous tract highlighted the disparity between respectable, credible individuals and the plight of those who have fallen from grace. While Captain Wilkinson was once 'a loyal subject, or an honest man', he was now 'sunk in the world' and was newly came to town to put himself in 'some new way of life' and regain his respectability.[106] By using the term 'sink' in their interrogatory, the plaintiffs were insinuating that not only had the bankrupt

[103] OED.
[104] Phillip Goodwin, *Dies Dominicus Redivivus; OR; The Lords Day Enlivened* (London: 1654), p.230.
[105] James Ellesby, *A Caution Against Ill Company* (London: 1705), p.63.
[106] *Animadversions On Capt. Wilkinson's Information* (London: 1682), pp.5-10.

declined in financial terms, but had also fallen below the accepted standards of moral, religious, and neighbourly conduct within the community.

Returning to *Hopkins v Newton*, the creditors asked whether Hopkins was in 1705 and 1706, 'known or generally reputed to be a thriving man' or whether he was known 'to abscond and withdraw himself'. It appears that the creditors were seeking to establish what the common assessment of Hopkins was during this period, assuming that Hopkins' credible or deceptive behaviour would be well known to the trading community. However, they further asked whether Hopkins was 'reputed to be in a flourishing condition or did he conceal himselfe soe that it was difficult to speak to him or procure him to be arrested'.[107] It becomes clear that in this situation the creditors see these two actions as mutually exclusive. A person can either be seen as credible by acting in a credible manner, appearing publicly and continuing with their trade; or they can be acting in a deceitful manner by concealing themselves from public view. In this context, the use of the term 'thriving' was commonly associated with an individual who increased their worldly and physical estate by honest, sincere, and generous causes. Often commentators made reference to the English proverb, 'Ill gotten goods seldom thrive', which was built upon the passage of scripture Mark 8:36: 'For what shall it profit a man if he shall gain the whole world, and lose his own soul?'.[108] To 'thrive' or to 'prosper' were generally taken as the same thing, and men who sought to achieve this not only had increasing estates, but were sound in mind and soul.[109] By attempting to make the deponents choose between Hopkins as a thriving man, or one who absconded, they were portraying him as an extremely deceitful individual, who at no point had acted in a trustworthy manner.

[107] TNA, C11/1330/22, 'Hopkins v Newton' (1718), Interrogatories submitted on behalf of the plaintiffs.
[108] See *Ill-Gotten Goods Seldome Thrive* (London); Jennifer Speake ed., *Oxford Dictionary of Proverbs*, sixth edition (Oxford: Oxford University Press, 2015), which states 'Ill-gotten goods never thrive', p.162; John Reading, *A Gvide to the Holy City* (Oxford: 1651), p.358.
[109] James Donaldson, *The Undoubted Art of Thriving* (Edinburgh, 1700), pp.1-3.

In *Buckworth v Peart* (1730), the plaintiff and assignee of the bankrupt asked whether a Captain Michaele was reputed to be a 'ready moneye man and a person of good Circumstances in the World or of ability to purchase the reale Estate' of the bankrupt.[110] This is an explicit reference to the availability of Michaels's disposable money. Ready money was seen as distinct and separate from estate, goods, and even credit. It seems that within this case, the plaintiff was seeking to establish whether or not Michaele was actually in a position to purchase the estate of the bankrupt, or whether it was fraudulently assigned in order to prevent the creditors gaining access to it. However, in a further five suits, reference is made to the bankrupt's 'circumstances', a term that was largely associated with material and worldly goods, rather than credit or trust throughout this period. In his treatise on the subject, Isaac Watts suggested that being of 'low circumstances in the world' was diametrically opposite to being rich, while Humphry Smith stated that 'Men of very low Circumstances in the World' were 'utterly destitute of any secular Advantages'.[111] Within these five suits, we see further reference to attempting to establish the bankrupt's 'estate', 'fortune', or 'stock and substance', meaning that creditors still sought to determine the physical, material, and financial valuation of individual worth. Throughout Chancery depositions, we see the formulation of language change according to the specifics and history of the case. Creditors utilised language that spoke to both the bankrupt's credibility and trustworthiness as well as their economic value of money and moveable goods.

[110] TNA, C11/1931/30, 'Buckworth v Peart' (1730), Interrogatories submitted on behalf of Eueraro Buckworth.
[111] Isaac Watts, *Discourses of the Love of God* (London: 1729), p.235; Humphry Smith, *The Divine Authority, and Usefulness, of Ecclesiastical Censures, Asserted* (Exeter: 1708), p.4.

Conclusion

This chapter has paid close attention to the depositional stage of proceeding, and in particular, the people and processes that went into creating the written documents that have survived. By paying close attention to the procedure put in place for asking questions, providing answers, and recording the process, it becomes apparent that Chancery was not only a court to be used and utilised as a debt-recovery mechanism, but was also an institution which helped to create narratives. However, rather than trying to determine whether the legal process has distorted the unique voices, or individual words of witnesses, this chapter has undertaken a different hermeneutic approach. As Adrian Wilson has suggested, rather than attempting to 'filter out' the mediating authorities, historians should embrace the activities of legal officers and their role in creating legal records. Ultimately, the society we are studying generated the documents we are using, and in investigating the genesis of those documents, '*we are thus investigating that society*'.[112] As such, the society under examination 'records itself' in the processes which generate documents, and it is from this viewpoint that every document therefore becomes a 'record of the society'.[113] The court of Chancery, coupled with this stage of proceeding, provided a definitive platform for a range of witnesses to comment on an individual failure, to which they were not necessarily directly involved. Through the process of analysing the specific words and phrases used in the formulation of narratives concerning economic failure, we can illustrate wider social attitudes towards bankruptcy.

The language chosen and presented in depositions were particular and evocative. Indeed, we have seen throughout this chapter how rich and evaluative language was utilised in order to comment on the physical, emotional, and psychological turmoil of bankruptcy and its effect

[112] Adrian Wilson, 'Foundations of an Integrated Historiography', In Adrian Wilson ed., *Rethinking Social History: English Society 1570-1920 and its Interpretation* (Manchester: Manchester University Press, 1993) pp.293-335; p.315.
[113] Ibid, p.319.

on those who experienced such failure. Witnesses commonly provided detailed — and often lengthy — descriptions of specific activities, providing a range of interesting aspects of a specific historical event. The words used to denote failure and decline mirrored wider conceptions of morality, credibility, and ethical behaviour within the community, as bankrupts were depicted as denigrating from a respectable position, to that of an untrustworthy individual. However, these were not necessarily stock phrases and conventions that were conveniently utilised to conform to legal requirements. Rather, throughout Chancery depositions, we see the formulation of language change according to the specific details and history of the case, highlighting the fact that creditors, debtors, witnesses, and others involved in the process, maintained a high degree of control over their use of specific words and phrases.

Chapter Four: Bankruptcy Commissioners' Files within Masters' Exhibits

Introduction

This chapter examines the documents that were submitted, and never reclaimed, by parties in a suit as evidence before a Chancery Master. As we have previously seen, pleadings provide a clear chronological description of the reasons why a variety of individuals initiated a suit in Chancery and sought assistance in the ongoing bankruptcy process. Similarly, the thorough investigation conducted at the deposition stage of proceeding allows an exploration of the specific and evaluative language utilised in relation to failure. Looking forward, enrolled decrees illustrate the legal rationale behind the decision-making process of the court, while the final chapter follows one case from its initiation through to its conclusion in Chancery. This means that each chapter reveals a different aspect of bankruptcy within Chancery. However, as a reference to a Chancery Master could occur at any point in a suit — which would obviously take place between the initiation of a bill and the final decree — exhibits cannot be placed within the timeline of either the bankruptcy process, or a specific stage of proceeding in Chancery. Furthermore, due to the procedure of the court and the subsequent filing and cataloguing of these documents, it is simply not possible to place some of these sources within the wider context of the Chancery suit to which they originally belonged. Therefore, the reason why such evidence was utilised in Chancery, as well as the background to the surviving documentation, may never be known. As such, this chapter does not fit neatly into the overall methodological approach of analysing each stage of a proceeding in isolation. Nevertheless, close attention has been paid throughout the thesis to analysing the different *types* of documents found throughout Chancery, and by undertaking a detailed examination of the evidence presented to a Chancery Master, this chapter maintains a level of coherence with the overall methodology.

The National Archives' online description suggests that the minority of exhibits that were not claimed 'form the collection of private papers known as Masters' Exhibits'.[1] While this is a simplified overview of the range of documents in this series — especially as several documents were actually created by the court — the serendipitous nature of this series means that both the content and quantity of documents within a single series can vary dramatically — more so than the other stages of a proceeding — from one reference to the next. Indeed, such sources include, but are not limited to, indentures, inventories, account books, schedules of payment, mortgages, paper instruments, private correspondence, wills, affidavits, and petitions. An online search for the term 'bankrupt' within the relevant Masters' exhibits classes returns twenty-nine results.[2] Having analysed the extant documentation for these twenty-nine cases, several contain many of the documents listed above, which relate to a broad range of individual bankruptcies. However, the size and scope of the documentation varies dramatically. For example, the single reference for *Goodere v Lake* contains two full boxes of a range of documents between 1681-1709, while in another entitled 'RE PARROTT, bankrupt', all that survives is a list of interrogatories drawn up for the examination of the assignees of Stonier Parrott.[3] These examples demonstrate that a single reference could contain multiple documents relating to a single person, or could contain a single document, and it is currently difficult to ascertain both the quantity and quality of the surviving material simply by the online description.

[1] TNA 'Chancery Equity Suits 1558-1875', online description, stable URL: http://www.nationalarchives.gov.uk/help-with-your-research/research-guides/chancery-equity-suits-after-1558/ accessed 1/10/2018.
[2] This search returned 55 results, which was reduced to 29 once duplicates had been removed. This search is correct as of 1/10/2018, TNA stable URL: http://discovery.nationalarchives.gov.uk/results/r?_srt=3&_aq=bankrupt&_cr=c103%7CC104%7CC105%7Cc106%7Cc107%7Cc108%7Cc109%7Cc110%7Cc111%7Cc112%7Cc113%7Cc114&_dss=range&_sd=1674&_ed=1750&_ro=any&_st=adv accessed 1/10/2018.
[3] TNA, C111/207, 'Goodere v Lake' (1681-1709); TNA, C107/211, 'RE PARROTT, bankrupt' (1738).

With this in mind, this chapter seeks to establish what we can learn from these diverse sources in relation to the bankruptcy process. While some references do allow a thorough investigation of financial failure, others are fragmentary. As such, sources have been selected which are more useful in achieving this aim — especially within the practical limitations of time and space within the thesis — and this chapter focuses on four references which contain the same type of document: the examination of witnesses by commissioners in a commission of bankruptcy.[4] The survival of these documents are extremely rare for this period, and analysing these sources allows a unique insight into the role and work of commissioners, as well as the manner in which a range of individuals were examined within a particular bankruptcy. While the other chapters of the thesis have paid close attention to the procedure of the court of Chancery, this chapter zooms in on one specific aspect of the bankruptcy process, analysing the content of these sources. Indeed, as commissioners were tasked with examining a range of witnesses in order to determine whether a debtor was a bankrupt, these files closely resemble depositions in style and form. While a detailed comparison between these two types of documents is discussed below, this chapter takes the set of methodological questions applied in the previous chapter to depositions and reapplies them towards examinations conducted by commissioners. Again, rather than attempting to 'filter out' such mediating authorities, particular focus is paid to the ways in which the work of the commissioners has impacted on the creation of the final documents that have survived.

We have seen in the previous chapter how Chancery clerks swore an oath to 'write down transcribe and Ingross the Depositions', while maintaining secrecy over the proceedings until their publication in the court.[5] In contrast, commissioners did not swear an oath to the crown

[4] There are actually five references which contain the examinations conducted by commissioners. However, one of these entries, TNA, C107/197, RE EGERTONK, bankrupt (1703, 1704), only contains the examination of five witnesses across four pieces of badly damaged paper and so has been excluded.
[5] See TNA, C11/2331/23, 'Haill v Camp' (1748).

and took a much more active role, as they were tasked with formulating and asking their own questions, as well as *listening* to the responses of witnesses. It is this key role of listening and interpreting witness statements which provides the context for the interpretation of commissioners' files. In this manner, commissioners were actively investigating the petitioning creditors, as well as a range of witnesses who had knowledge of the bankrupt's activities. The combination of these statements demonstrates how individual failure was constructed and presented from multiple sources within the bankruptcy process. Furthermore, the commissioners would strive to examine the bankrupt, as well as several members of the bankrupt's family, providing a unique opportunity for the self-presentation of failure outside of the formal setting of the courts. This is a key difference from the analysis undertaken in the previous chapter, as the statements and the use of narrative created and presented within these documents did not have to conform to the legal requirements of a central equity court.

The chapter is divided into two broad sections, which are themselves sub-divided into two parts. The first section looks at the role and jurisdiction of bankruptcy commissioners as defined in early modern statutes and contemporary commentary. The existing scholarship has tended to focus on commissioners' authority and whether or not their examinations could be utilised as evidence in the central courts at Westminster. While this is detailed below, this chapter seeks to establish how such a specific role influenced the creation of the written documents that have survived. Such testimony was initially only intended to be used as evidence within the limited jurisdiction of a commission of bankruptcy, before becoming employed in a different form as evidence in a Chancery suit. The presentation and content of these 'informal' documents are compared to 'official' Chancery documents, such as pleadings and depositions. The second part then focuses on the four sources themselves in order to examine the specific details of these investigations, and what this can tell us about the activities of bankruptcy commissioners within these case studies. The second section then

focuses on the use of language within these files, and particular attention is paid to the multiple uses and meanings of the term 'absconding'. Up to this point in the thesis, the concept of absconding has largely been discussed in terms of its statutory definition as an act of bankruptcy. However, the term came to be utilised in this period to denote the actions of individuals in a wider social and cultural context. The first part links the use of absconding to notions of exile and being removed from social norms, while the second part analyses how individuals came to self-appropriate the term and use it in a virtuous way.

Bankruptcy Commissioners' Files

The Role and Jurisdiction of Bankruptcy Commissioners

The introduction to the thesis outlined the role and authority of bankruptcy commissioners. To recap, the ability of commissioners to identify and interrogate witnesses, who may have held knowledge or goods relating to a debtor's failure, greatly increased over the seventeenth century. However, one important aspect of their role was the scope for personal discretion over how they conducted such business. For example, as a Royal Commission explained in 1826, since only three out of five commissioners were required to attend a meeting, 'the suitor is exposed, even in the same court, to a perpetual change of the judge', even within the same commission.[6] This meant that commissioners earned a wage through the application of — potentially unnecessary — meetings, but it was also not uncommon for parties to receive contradictory information and decisions at different meetings from the same commission.[7]

[6] 'Royal Commission on the Practice of Chancery' (1826), quoted in Lobban, 'Bankruptcy and Insolvency', p.787.
[7] Duffy, *Bankruptcy and Insolvency in London During the Industrial Revolution*, p.36.

For the purpose of this chapter, what is important to note, is that such a procedure resulted in significant divergencies in the administration of both procedural and substantive law.[8]

One example of such a divergence can be seen in how commissioners examined witnesses brought before them. The statute of 1 James I (1604) specified that it was lawful for the commissioners to examine witnesses by written interrogatories, which were to be framed according to the Matters to be examined.[9] However, as Thomas Goodinge explained, some commissioners 'will not examine by Interrogatories at all, lest thereby their Knowledge before-hand may make the Witnesses frame Evasions'. Goodinge condemned this process, suggesting it was a 'Sort of careless Behaviour, and too slight for such a weighty Matter as this'. Ultimately, Goodinge concluded that where interrogatories were required, the commissioners were 'bound to give them'.[10] However, the statute of 5 Geo 2 (1731), specified that commissioners could 'examine as well by word of Mouth, as on Interrogatories in Writing', as long as they 'take down or reduce into Writing the Answers of Verbal Examinations', which the witness was required to sign.[11] Goodinge summarised that such a method of recording answers was done 'for the better Certainty of the Evidence'.[12] Indeed, the individuality of each commission can be seen in Goodinge's statement regarding the usefulness of formulaic interrogatories: 'I had thought to have inserted here the Forms of some comprehensive Interrogatories, but there is such Variety of Examination in the executing this Commission, that I shall leave that to the Ingenuity of the Commissioners, as the Nature of the Case and the Matter before them shall direct'.[13] Ultimately, the core element of a commissioner's role can be seen in them interrogating witnesses, listening and

[8] Lobban, 'Bankruptcy and Insolvency', p.787.
[9] 1 James I c.15 (1603); Goodinge, *The Law Against Bankrupts*, pp.72-73.
[10] Ibid, p.73.
[11] 5 Geo 2 c.30 (1731), s.41.
[12] Goodinge, *The Law Against Bankrupts*, p.46.
[13] Ibid, p.73

interpreting their answers, and creating a written record of this process. Understanding this procedure provides the context for analysing these documents, as witnesses were asked to give evidence and formulate their answers surrounding specific aspects of failure.

Despite the increase in legislative powers, the jurisdiction and authority of commissions were not clearly defined and were a constant source of debate. For example, it is clear that the task of bankruptcy commissioners involved significant expenditure of time, and commissioners expected to be compensated for their expenses. Initially, there were no statutory guidelines in place to address this issue, but Lord Chancellor Nottingham acknowledged that commissioners should be reimbursed. However, he also shed some light on improper practices by stating that expenses should be regulated, so as not to 'swallow a great part' of the bankrupt's estate. Furthermore, Nottingham disallowed any expenses for meetings in taverns, or for the entertainment of commissioners, and any person who broke these guidelines would be forbidden from acting as a commissioner in the future.[14] Sir Edward Coke stated that judges, who received their salary from the crown, could not take other fees except in special circumstances, such as at special assizes. However, commissioners were not judges but unsworn persons who were placed in a position of trust, and so it was inferred that they could take additional fees from the estate of the bankrupt, which would reimburse their expenses.[15] This issue of payment to commissioners highlights the uncertainty surrounding the authority of both the commissioners and the commission of bankruptcy itself. Indeed, Jones has described the authority of commissioners as 'amorphous', suggesting that the early bankruptcy statutes made the situation 'abominably obscure'.[16]

[14] Heneage Finch, *Manual of Chancery Practice*, pp.164-165.
[15] Jones, 'The Foundations of English Bankruptcy', p.33.
[16] Ibid, p.48.

One specific example of such uncertainty can be seen in the ambiguity that arose over the oath that was taken by commissioners, which only entered the statute books in 1731.[17] In drawing a parallel with similar types of commissions, Jones has suggested that while commissioners of sewers had an elaborate oath written into their controlling statute of 1531, bankruptcy commissioners 'were apparently only sworn from 1719'.[18] However, in a suit from 1676, whereby the plaintiffs were the creditors in an ongoing commission of bankruptcy, Nottingham was at first unwilling to hear the cause as the commissioners were 'on their oaths, and if they did wrong were liable to an action at law'.[19] Jones concludes that he was 'not sure that there was anything to prevent the lord chancellor on his own authority from requiring bankruptcy commissioners to be sworn'.[20] Despite not being explicitly mentioned in statute law until 1731, it appears that by the time of Nottingham, commissioners were being directed to swear an oath to the crown under the authority of the Lord Chancellor. This assumption is confirmed in my sample, as in the four cases discussed below — three of which occur before 1731 — the commissioners frequently declare that they had sworn an oath before undertaking their duties. This is another example of the disparities seen between legal ideals established in the statutes and the practical reality of day-to-day procedure discussed throughout the thesis. In this instance, the statutory insistence that commissioners swear an oath had simply formalised a procedure that was already taking place. From 1731 onwards, rather than swearing an oath on a case-by-case basis under the authority of the Lord Chancellor, commissioners were legally required to swear an oath to the crown.

Parallels can be drawn to other public servants who worked under the supervision of the state. In his work on the social composition of revenue officers, John Brewer has shown how these

[17] 5 Geo 2 c.30 (1731), s.43.
[18] Jones, 'The Foundations of English Bankruptcy', p.33, n.149.
[19] 'Benzee, Guipponi, Bartelotti, &c.' (1676) in Yale, *Lord Chancellor Nottingham's Chancery Cases*, vol.1. p.313.
[20] Jones, 'The Foundations of English Bankruptcy', p.33 n.149.

'respectable' officials — who numbered approximately 7,000 by the last quarter of the eighteenth century — almost certainly excluded the overwhelming majority of the labouring poor and were more likely to be confined to the 'middle ranks of society'. Of this middling sort, there were several examples of tradesmen who had fallen on hard times, as well as farmers or members of a group Brewer describes as the 'shabby but genteel'. Similarities arise in the work conducted by bankruptcy commissioners, as in order for career advancement to take place within the revenue, officers needed skills in penmanship, mathematics, and bookkeeping, meaning a significant proportion had often performed 'some kind of clerical work' before they joined government service. Ultimately, revenue officers saw themselves as persons of skill, expertise and learning.[21] One contrast is that public servants earned a far lower wage, with Geoffrey Holmes estimating that ninety five percent earned between £40 and £80 per annum in the early eighteenth century.[22] Yet, as the logistics and infrastructure of tax collection became formalised after 1688, Brewer shows how public servants became attached to a distinctive administrative order as servants of the crown.[23]

While their initial loyalty was to the King's service, as departmentalism increased and competition between state departments flourished, an officer's first allegiance 'was to the branch of government they served'.[24] As Brewer concludes, to see revenue officers as either servants of the public or servants of the Crown is therefore a mistake: 'In one sense they were servants of both, in another they were servants of neither'.[25] Building on the work of Brewer, Joanna Innes has shown that unlike modern notions of central and local government, during

[21] John Brewer, 'Servants of the Public – Servants of the Crown: Officialdom of Eighteenth-Century English Central Government', in John Brewer and Eckhart Hellmuth eds., *Rethinking Leviathan: The Eighteenth-Century State in Britain and Germany* (Oxford: Oxford University Press, 1999), pp.127-147, p.133.
[22] Geoffrey Holmes, *Augustan England: Professions, State and Society, 1680-1730* (London: G. Allen & Unwin, 1982), p.256.
[23] John Brewer, *The Sinews of Power: War, Money and the English State, 1688-1783* (London: Unwin Hyman, 1989), p.85.
[24] John Brewer, 'Servants of the Public', p.140.
[25] Ibid, p.147.

the eighteenth century such a dichotomy was seen in terms of 'officers of the crown' or 'officers of the state' on the one hand, and 'inferior' officers on the other. Outside of the constraints of military and fiscal operations, these 'inferior' officers were 'free to operate within their sphere as they saw fit, subject only to such penalties as they risked incurring if they exceeded or abused their authority'. While Innes doesn't explicitly mention bankruptcy commissioners in her analysis, it seems clear that, within this context, commissioners would be seen as 'inferior officers', especially those sworn to act on behalf of the court outside London. As such, Innes claims that it was statute law which provided and defined the 'basic framework', within which inferior officers conducted their work.[26]

The legal scholar Amnon Rubinstein further explains this point, suggesting that where the law creates a body of persons, with power to regulate the behaviour of others, the law must also 'contemplate a possible misuse of this authority'. Individuals with such an authority may mistakenly interpret legal provisions, disregard judicial orders, or simply exceed their authority.[27] In this manner, Rubinstein describes seventeenth-century bankruptcy commissioners as 'the classical example of a judicial body not constituting a court of record, whose decisions could be examined in collateral proceedings'. As explained in the introduction to the thesis, it was possible to bring an action against a commissioner in the common law courts for acts committed in the discharge of their duties. The simple fact of being an official within bankruptcy proceedings did not shield them from the jurisdiction of the courts.[28] While a commission held a statutory basis — and through its publication in the *London Gazette* the fact of its issue was supposedly a 'matter of record' — the commissioners themselves did not constitute a court of record.[29] In 1700, Lord Chief Justice

[26] Innes, *Inferior Politics*, pp.2-4.
[27] Amnon Rubinstein, *Jurisdiction and Illegality: A Study in Public Law* (Oxford: Clarendon Press, 1965), p.3.
[28] Ibid, p.60.
[29] Goodinge, *The Law Against Bankrupts*, p.44.

Holt inferred that commissioners 'had only an authority and not a jurisdiction'.[30] As such, it is understandable that extreme caution in not overstepping their authority became the general rule. However, as previously discussed in the first chapter — and further clarified in the following chapter on enrolled decrees — the fact that different courts could rule on the same issue — i.e. an act of bankruptcy — not only meant increased delays and expense, but also raised serious questions regarding the legitimacy of the competing jurisdictions.

Jones clearly states that the proceedings of the commissioners could not 'be read in Westminster Hall'.[31] References to this point are numerous in contemporary commentary on the subject. In a case from 1677, Nottingham dismissed the bill, as the plaintiff held 'no proofs in this case but the depositions taken before the commissioners of bankrupts which cannot be read in Westminster Hall'.[32] Furthermore, in his *Prolegomena of Chancery and Equity*, Nottingham explained, 'Depositions taken by commissioners of bankrupts to prove the bankruptcy cannot be given in evidence at law, because the other side could not cross examine; and this is common experience'.[33] Goodinge repeated this assertion: 'Depositions taken by Commissioners shall not be given in Evidence in a Suit, where it comes in Question, whether he were a Bankrupt or not, or to prove any Matter depending upon it, for that the other Party cannot cross-examine the Party sworn: This is the common Course'.[34] However, in the same publication, Goodinge seems to contradict himself. In discussing a previous case in an action for Trover — for recovery of damages for wrongful taking of personal property — he explains that the Evidence offered, 'were the Depositions before the Commissioners of Bankrupt, which *per Curiam* [by court] is good enough'.[35] Returning to Goodinge's

[30] Edith G. Henderson, *Foundations of English Administrative Law: Certiorari and Mandamus in the Seventeenth Century* (Cambridge, Massachusetts: Harvard University Press, 1963), p.114.
[31] Jones, 'The Foundations of English Bankruptcy', p.34.
[32] 'Greenwood v Knipe' (1677) in Yale, *Lord Chancellor Nottingham's Chancery Cases*, vol.1, pp.570-571.
[33] Heneage Finch, *Manual of Chancery Practice*, p.317.
[34] Goodinge, *The Law Against Bankrupts*, pp.48-49.
[35] Ibid, p.144.

promulgation of the need for interrogatories, the author explained that at a trial, 'Depositions may be made Use of as Evidence, (especially against the Party himself, or in the Case of the Death of Witnesses) and to read a Deposition without referring to Interrogatories, is to judge upon an Answer without knowing the State of the Question'.[36] Indeed, the 1731 act clearly explained that such 'Commissions, Depositions and Proceedings … are not at present of Record, nor can be given in Evidence'. However, due to the frequent loss or misplacing of these documents, it was enacted that upon petition to the Lord Chancellor, any proceeding of the commissioners 'may be entered of Record'. This meant that the Lord Chancellor could order these documents to be entered as a matter of record and utilised as evidence 'in any of his Majesty's Courts of Record', on a case-by-case basis.[37] Ultimately, the fact that a commission was initiated, overseen, and conducted on an individual basis, led to a degree of uncertainty and a level of ambiguity arising over the jurisdiction and authority of a commission.

It is important to remember that these documents went through two stages of being utilised as evidence. The first can be seen in the witnesses who were summoned before the commissioners to answer questions specific to the bankruptcy under question. Such witness statements were taken solely for the purpose of determining whether the debtor was to be legally declared a bankrupt, and it is this stage under which the documents were created. The second stage can be seen in their use as evidence in a Chancery suit, as they were utilised in order to inform a Master about a particular aspect of the case he was investigating. However, once the documents were created and utilised in their first stage — as evidence to inform commissioners — they were not systematically stored and filed. Indeed, from an estimated 33,000 bankruptcies throughout the eighteenth century, Julian Hoppit only managed to

[36] Ibid, p.73.
[37] 5 Geo 2 c.30 (1731); s.41.

identify 152 surviving examinations by commissioners, accounting for 0.46 per cent of the total number of bankruptcies. Of this total, ninety per cent relate to bankruptcies occurring between 1780-1800, meaning that my research provides a rare insight into the work of commissioners during the late seventeenth and early eighteenth centuries.[38] As the commissioners were examining witnesses — either verbally or through written interrogatories — and recording their responses, these files offer obvious similarities to depositions in their form and style. For example, each witness was required to give their name, place of residence, and a short occupational ascription. However, perhaps the most obvious difference between these documents and depositions can be seen in their presentation. While depositions were neatly transcribed onto large pieces of parchment, examinations by commissioners were recorded on paper which was bound to form a small book or folder, which is demonstrated through the three figures below.

[38] Hoppit discovered the vast majority of these sources in the old B3 catalogue — 'Office of the Commissioners of Bankrupts and Court of Bankruptcy: Bankruptcy Commission Files' — at the Public Record Office, which runs from 1753-1854, Hoppit, *Risk and Failure in English Business*, pp.140-142, p.197.

Figure 5: Deposition taken in TNA C11/1331/11, ‘Newton v Turner’ (1720).

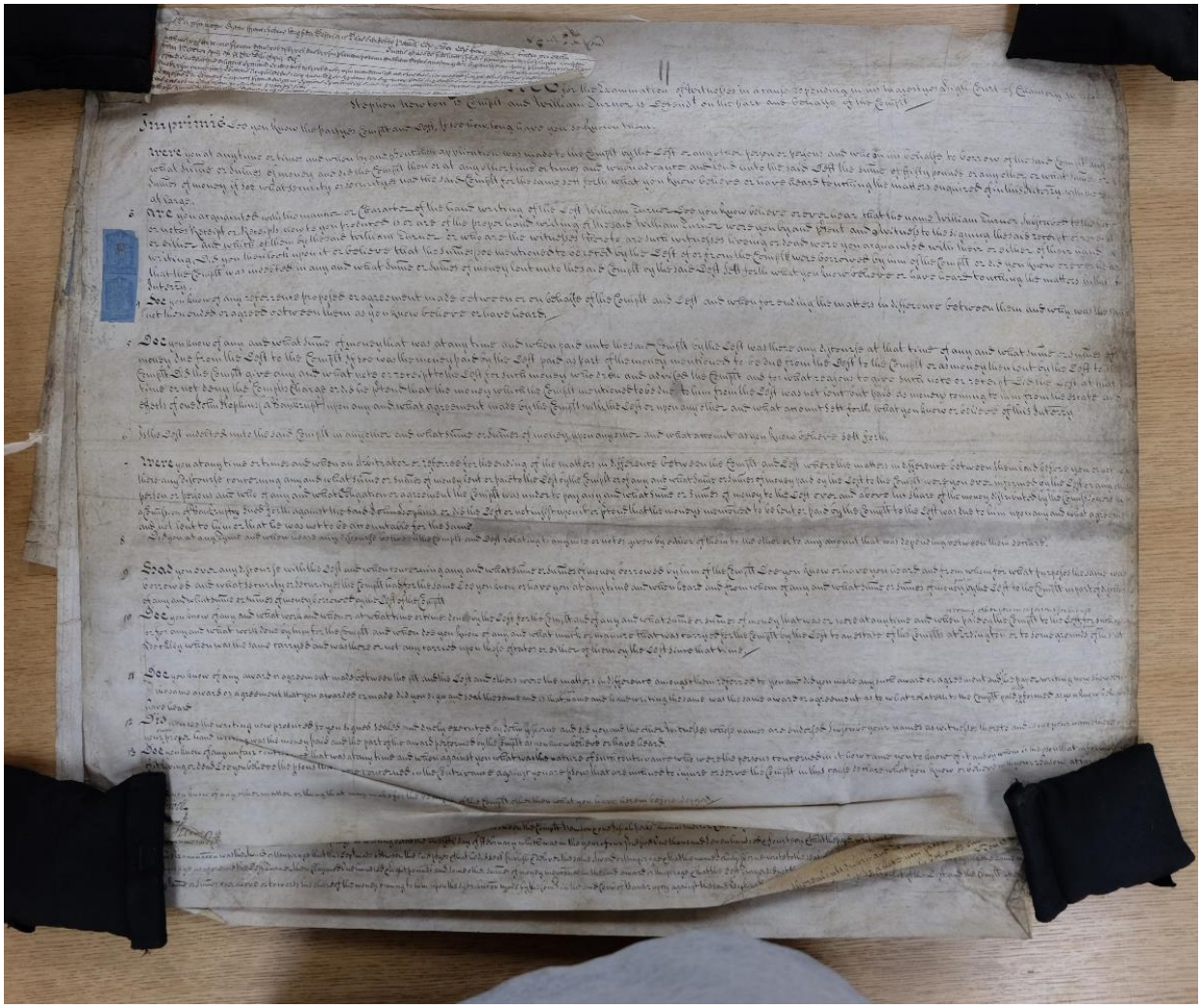


Figure 6: Examination of Daniel Perkins, taken from the commissioners' file in TNA C107/112 'Re Vyner, bankrupt: Papers relating to Sir Robert Vyner, goldsmith: London' (1690).

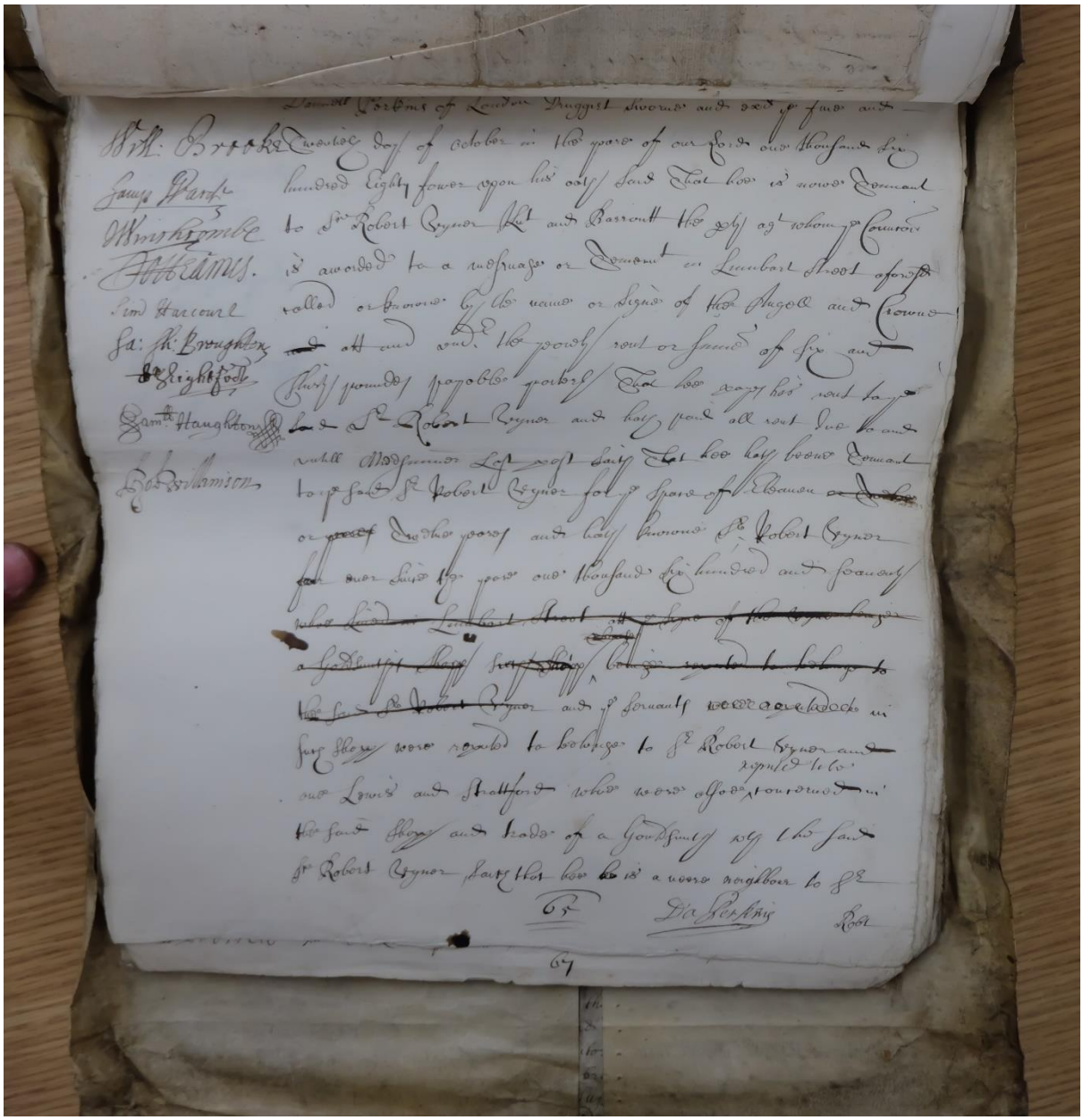


Figure 7: Memorandum by the commissioners that Richard Shute was declared a bankrupt, made on a separate piece of paper and attached to the original file. Signed by the three commissioners. TNA, C104/226, 'SHUTE, a Bankrupt' (1720-1721).

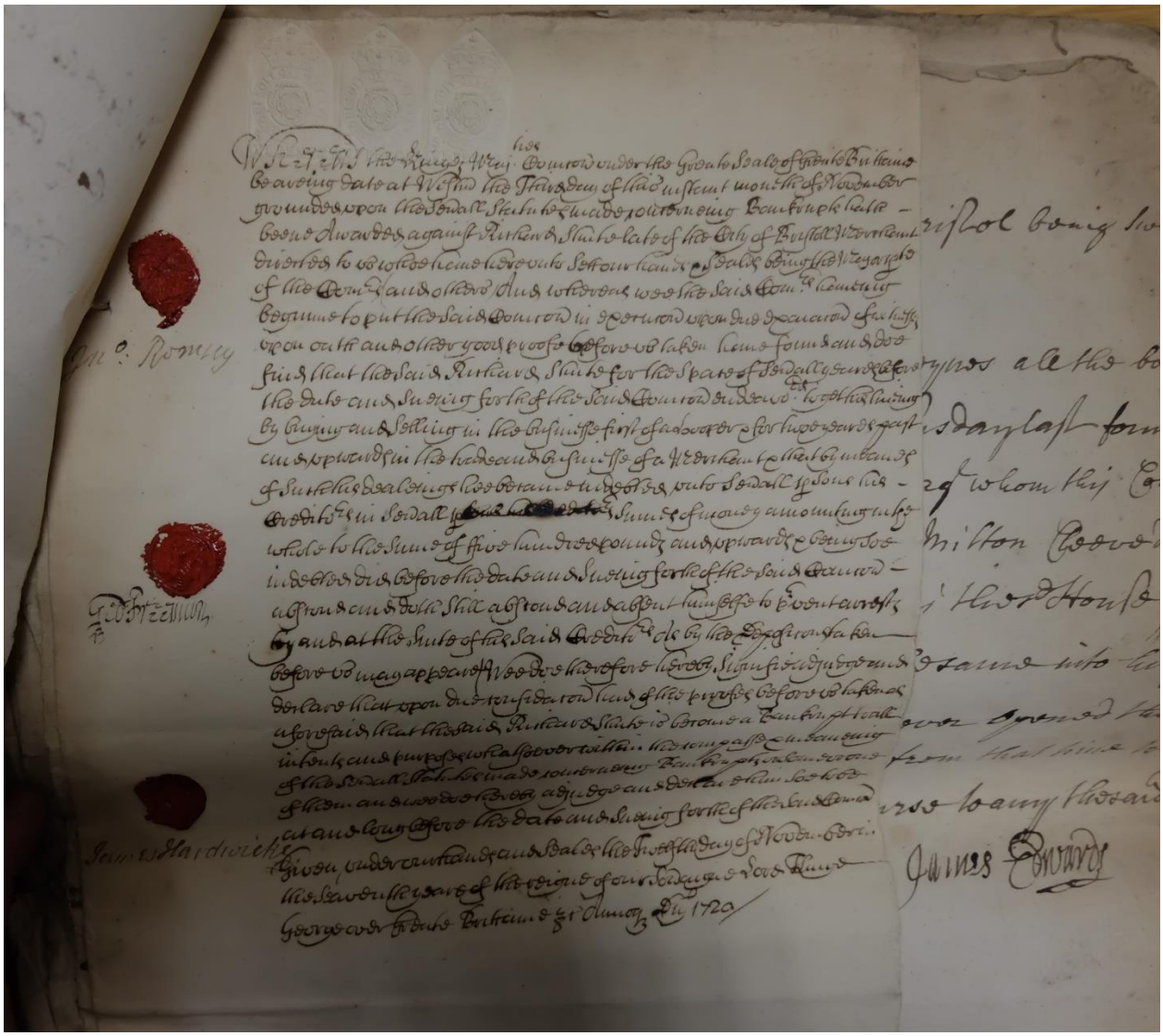


Figure 5 shows all the documentation — a writ, a list of interrogatories, and the deposition of witnesses — present in a deposition taken in Birmingham, Warwickshire. We can see that the documents have been attached in the top left-hand corner and neatly written out on parchment. In comparison, figure 6 shows a commissioners' file taken from 1690. We can see that the pages are bound together in a simple fashion at the top and can be worked

through in numerical order by vertically flipping the pages. It was common for additional pieces of paper to be attached to the numbered pages, and Figure 7 shows a memorandum attached from the commissioners, declaring that Richard Shute was found to be a bankrupt. As well as these examples, several other legal or private documents could be entered as evidence within examinations, such as inventories, petitions and printed bonds. We can see these documents are not as neatly presented as depositions, with many errors, deletions and additions taking place. The main point to make here, is that the audience for each document differed dramatically. As Laura Gowing has shown, the use of parchment was typically associated with conferring legality and durability.[39] As such, 'official' Chancery documents were professionally written — either by lawyers who were submitting pleadings or Chancery clerks who were transcribing depositions and decrees — with the intention of being publicly submitted to the court and stored for future use. In contrast, commissioners' files were transcribed and created for the commissioners' own, personal use. This is again another reason why an analysis of these documents needs to be placed in the context of the commissioners formulating, asking and transcribing answers that they felt were pertinent to the investigation of failure.

Four Case Studies

Turning to the sources, it is necessary to clarify that it is unclear why two of these suits initially came to Chancery, or why they were subsequently referred to a Chancery Master. Few, if any, pleadings survive which can be directly related to the Master's exhibit, and with only fragmentary documentation, it is difficult to ascertain the motivation behind entering

[39] Laura Gowing, 'Girls on Forms: Apprenticing Young Women in Seventeenth-Century London', *Journal of British Studies*, vol.55 no.3 (2016), pp.447-473.

Chancery, or the way in which the commissioners' files were utilised as evidence. Despite these limitations, these sources can inform us of several aspects of the role and activities of the commissioners. This is best illustrated in the bankruptcy of Richard Shute, a cooper and merchant from Bristol. Within this file, we see that a commission of bankruptcy was taken out on 3 November 1720, and fifteen witnesses were examined between 11 November 1720 and 10 April 1721, with Shute being declared a bankrupt on 12 November 1720 for debts of over £500. However, an indenture of the bankrupt's estate was not made to the three petitioning creditors and assignees — Samuel Roach, Anne Freeman and Thomas Rosse — until 28 March 1721.[40] The main reason for this delay was the fact that the bankrupt had petitioned the Lord Chancellor on 17 November 1720, shortly after the declaration that he was a bankrupt, claiming that he had not committed an act of bankruptcy, and the commission was taken out, 'with an intente to ruin him'. Ultimately, Shute hoped to get the commission superseded, but the petition was dismissed by the Lord Chancellor with all costs being recoverable from the bankrupt's estate. As was common practice, all proceedings of the commissioners were halted until the petition was heard, which only occurred on 10 January 1721.[41]

As well as establishing a clear timeline of the process in Chancery, one witness statement sheds light on the way in which documentation was discovered and presented to commissioners. In January 1721, James Edwards informed the commissioners that 'the sack' now produced by him, 'conteynes all the books writings and papers which he this Deponent on Wednesday last found in a Desk' and a 'Closett' belonging to the bankrupt. Furthermore, 'from the time he took the same into his possession and putt the same into the said bagg never Opened the said Bagg and that no person whatsoever from that time to this his Examination

[40] TNA, C104/226, 'SHUTE, a Bankrupt' (1720-1721).
[41] Ibid, Lord Chancellor's Order to the Petition of Richard Shute.

hath had recourse to any the said books papers or writings'.[42] This statement speaks to certain assumptions made about the manner in which evidence was presented to a Chancery Master, as well as why it was never collected from the court. When working through such disjointed sources, it often seems as if an individual had simply deposited a large pile of documents for the court to work through.[43] In this statement, we see that Edwards had collected a large quantity of documentation, and without reading it, deposited it with the commissioners. While it seems that fewer documents now survive in the Master's exhibit series — as there is not enough to fill a 'sack' or bag — it does present a possible explanation as to how and why such documentation was collected, presented, and subsequently never reclaimed in the court. In this example, a witness had discovered the bankrupt's paperwork and simply handed it over, and it seems that there was no reason for him either to inspect the documents or to recover them from the Master, at the completion of the suit.

Further details can be gleamed from this file. For example, it is clear that despite an advertisement in the *London Gazette*, only three creditors came forward to prove their debts and pay contribution money. On 28 January 1721, the commissioners declared that as this was the case, they 'find it necessary to Examine many Witnesses' as the 'recovery of the Bankrupts Estate appears difficult and Chargeable'. As such, the commissioners suggested that such witnesses would insist on being paid their 'Charges', and ordered that all creditors seeking relief must pay 3s. 6d. in the pound contribution, 'for all such moneys as they shall prove or affirm'.[44] Indeed, in several memorandums, witnesses had claimed either five shillings or ten shillings in expenses, not only demonstrating further costs that could be incurred through this process, but further illustrating the extensive powers of commissioners

[42] Ibid, Examination of James Edwards.
[43] This assumption has been made by several archivists working through the Chancery Master's series, and in particular Liz Hore at TNA.
[44] TNA, C104/226, 'SHUTE, a Bankrupt' (1720-1721), Memorandum of Commissioners.

to summon, examine, and even reimburse witnesses for their testimony. Indeed, the fact that several witnesses were paid expenses adds another dimension to these examinations, as they demanded to be reimbursed for their time, demonstrating that they were not there voluntarily. One final point to note is that one of the commissioners, George Freeman, was actually a practicing attorney, who had previously taken out suits on behalf of Roach and Freeman against Shute.[45] Ultimately, several of the details provided above demonstrate a striking resemblance to issues discussed in depositions, as in order to come to a firm understanding of the facts of failure — or the facts of the case in Chancery — it was necessary to interrogate a broader range of witnesses than simply the creditors or debtors of a bankrupt. Similarly, in both depositions and a commission of bankruptcy, local and personal knowledge of the specific details of the debtor were actively encouraged. As Shute's bankruptcy occurred in Bristol, and outside the jurisdiction of London, both bankruptcy commissions, and commissioners conducting depositions in the country, were a far cry from the professional bureaucracy that was being established in London throughout the eighteenth century.

Turning to another source, the bankruptcy of Sir Robert Vyner, a prominent goldsmith banker who suffered severe financial difficulties as a result of the Stop of the Exchequer of 1672, can inform of us of the manner in which commissioners undertook their tasks. Firstly, it is necessary to provide some background to this failure, as Vyner appears frequently in scholarship regarding seventeenth-century finance.[46] In 1661, Vyner became the king's goldsmith, supplying the royal jewel house and commissioning silver and gold plate from master craftsmen in the Goldsmiths' Company. During the years that followed, and with an increasing personal fortune, Vyner came to be the Crown's single largest individual creditor

[45] Ibid.
[46] As well as the references below, see Henry Roseveare, *The Financial Revolution 1660-1760* (London: Routledge, 1991); Stephen Quinn, 'Goldsmith-Banking: Mutual Acceptance and Interbanker Clearing in Restoration London', *Explorations in Economic History*, vol.34, no.4 (1997), pp.411-432.

and one of the country's largest private bankers.[47] At the time of the Stop, Vyner was owed more than £400,000, which accounted for nearly one-third of the total debt owing from the crown.[48] As such, it is not surprising that after the impact of the Stop, multiple suits were brought against the two largest bankers — Vyner and Edward Bakewell — in several jurisdictions. A cursory glance through the online catalogue at The National Archives shows Vyner involved in over sixty suits — in Chancery alone — between 1672 and 1688, with several continuing after his death.[49] Indeed, between 1677 and 1689, Vyner's firm made 731 assignments to private individuals, with Gerald Alymer claiming that it seems 'remarkable' that Vyner remained technically solvent until 1684.[50] Turning to the file itself, the original petitioning creditors — Stephen Tracey, Richard Chessin, and Elizabeth May — stated that Vyner owed over £10,000 to his creditors.[51] The examination was conducted between 17 April 1684 and 15 November 1684, and throughout this period, thirty-eight witnesses were sworn to answer written interrogatories, relating to a range of issues pertinent to their knowledge of Vyner's failure.

The fact that written interrogatories were provided becomes clear through a memorandum of a witness named Barrington, dated 16 October 1684. Barrington stated that as the interrogatories were very long, being thirty-three sheets in length, and seeing as he had only recently taken possession of them, he believed that the time allotted to answer them was

[47] G. E. Aylmer, 'Vyner [Viner], Sir Robert, Baronet', *ODNB.*
[48] J. Keith Horsefield, 'The "Stop of the Exchequer" Revisited', *Economic History Review*, vol.35, no.4 (1982), pp.511-528, pp.515-516.
[49] TNA, online search 'Robert Vyner' in all C classes between 1672-1688, Stable URL: http://discovery.nationalarchives.gov.uk/results/r?_srt=3&_ep=%22robert+vyner%22&_cr=c&_dss=range&_sd=1672&_ed=1688&_ro=any&_st=adv accessed 12/10/2018.
[50] G. E. Aylmer, 'Vyner [Viner], Sir Robert, Baronet', *ODNB*; see also Barbara J. Todd, 'Fiscal Citizens: Female Investors in Public Finance Before the South Sea Bubble', in Sigrun Haude and Melinda S. Zook eds., *Challenging Orthodoxies: The Social and Cultural Worlds of Early Modern Women* (Surrey: Ashgate, 2014), pp.53-74, p.56; Samuel Pepys, *The Diary of Samuel Pepys*, edited by Henry B. Wheatley (London: George Bell and Sons, 1904), p.201, p.380; Pepys later revealed his surprise that the Bank of Amsterdam never paid interest to depositors.
[51] TNA, C107/112, 'Re Vyner, Bankrupt: Papers Relating to Sir Robert Vyner, Goldsmith: London' (c.1690), petition of Stephen Tracey, Richard Chessin and Elizabeth May to execute a commission of bankruptcy.

simply ‘too short’. As such, Barrington required more time and claimed that after a few days, ‘the answers shall be brought in’.[52] On the same day, another witness stated that their answer to the interrogatories, ‘is not quite finished, but I shall have done it in a day or two, and then shall deliver it at theire next sitting soe soone as it is done’.[53] This process is confirmed by Vyner himself, who after the third and final summons, made a brief appearance on 15 November 1684, whereby he ‘Demanded Interrogatoyes’, which were subsequently delivered to him by the commissioners.[54] These statements demonstrate the manner in which commissioners were tasked with formulating questions and interpreting their answers. As no interrogatories survive, the assumption is that witnesses would have read through designated questions in their own time and provided their written answers back to the commissioners. Indeed, while advice manuals outlined the options available to commissioners in undertaking their duties, this case demonstrates how such divergencies could occur in practice, as we see written interrogatories presented to witnesses to peruse at their leisure. However, as we have already seen, it would be the commissioners themselves who would subsequently examine the witnesses, writing down their own interpretation of the answers provided to them. This again shows that it was what the commissioners judged to be pertinent and important responses that have survived in the records.

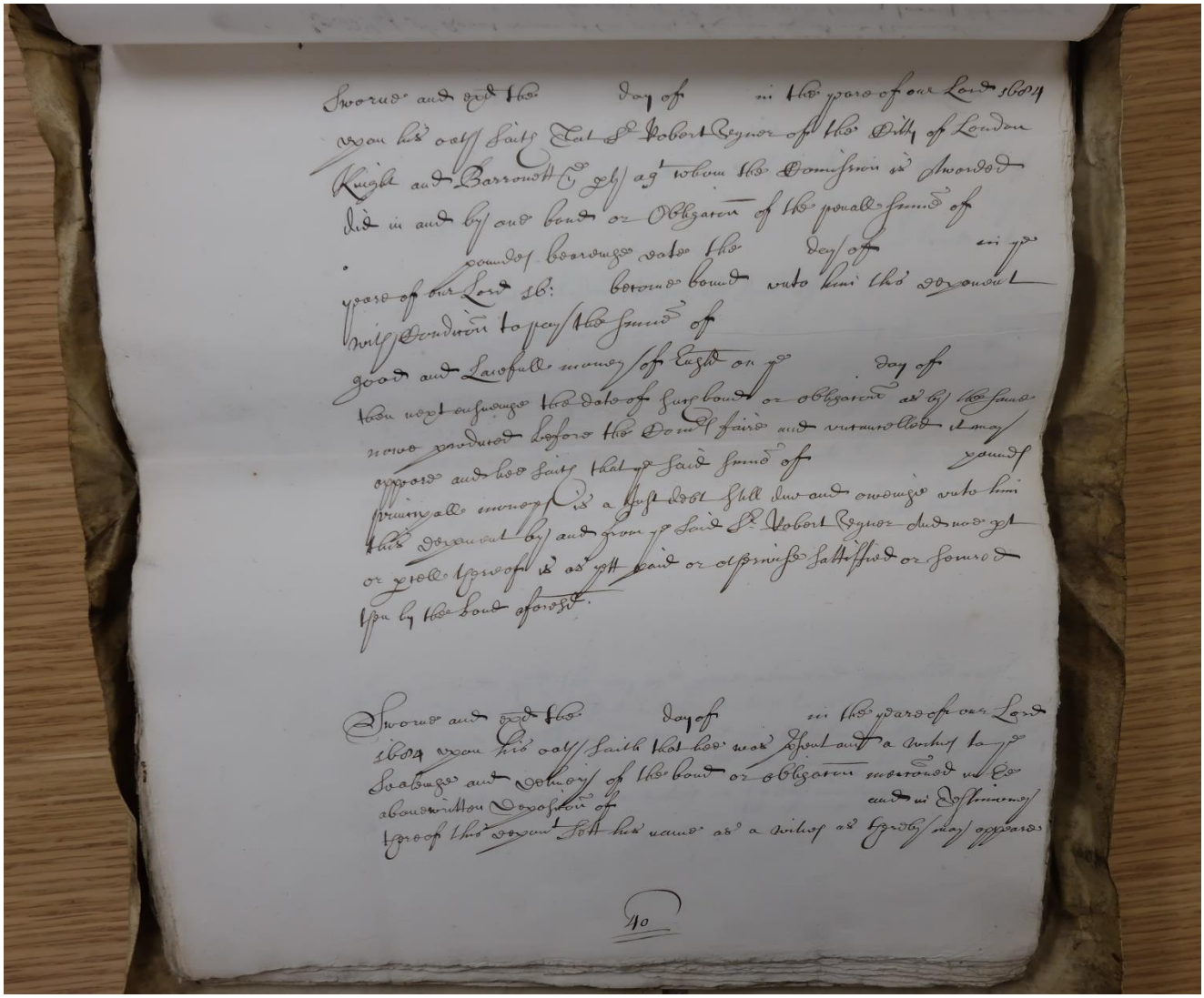
Several witnesses appeared simply as creditors stating the debts due to them, while others were examined as tenants of Vyner, establishing the amounts outstanding for rent on properties in Lombard Street. While these were formulaic in nature, they were far from straightforward. For example, Elizabeth May, one of the petitioning creditors, explained that she originally deposited £120 to Vyner in his shop in Lombard Street, taking a note for the

[52] Ibid, Memorandum of Master Barrington.
[53] Ibid, Memorandum of Benn Fales.
[54] Ibid, Examination of Robert Vyner.

transaction. Sometime afterwards, Vyner, along with two other goldsmiths named Henry Lewis and Richard Stratford, assigned a bond to May in the penal sum of £240 and for the repayment of £123. As the time to redeem the bond had now passed, it is unclear whether May was simply claiming the initial £120 principal money, the £123 principal plus interest, or the full repayment of £240. This is further complicated by the fact that two other goldsmiths had assigned their name to the bond, meaning Vyner was not solely liable.[55] What becomes clear in these accounts, is the frequency with which Vyner borrowed on bond between the Stop and his eventual bankruptcy. It is possible that this system of repayment may have maintained Vyner's finances for the twelve years between the Stop and his eventual bankruptcy, before eventually creating a liquidity crisis, in which creditors took out a commission of bankruptcy as their confidence in being repaid had been depleted.[56] For example, Nicholas Smyth was examined on 25 September and his answers form five separate entries in the commissioners' files. Smyth stated he was a servant of Vyner for over eleven years, and his appearance throughout the proceeding is simply as a witness to the signing of several bonds by Vyner and his partners.[57] The centrality of bonds to this bankruptcy is further illustrated by the fact that eight blank witness statements survive, an example of which is shown in Figure 8 below.

[55] Ibid, Examination of Elizabeth May.
[56] G. E. Aylmer, 'Vyner [Viner], Sir Robert, Baronet', *ODNB.*
[57] TNA, C107/112, 'Re Vyner, Bankrupt' (c.1690), Examination of Nicholas Smyth.

Figure 8: A template created by commissioners in Vyner's bankruptcy file, whereby the names of creditors and the amount due on a bond had been left blank. TNA C107/112, 'Re Vyner, bankrupt' (1690).



It is worth pausing on this document to analyse it in greater detail. Within this template, we can see that the names of creditors and the amount due on a bond have been left blank. In a recent PhD thesis, Frances Maguire has shown how such 'blank articles' shaped administrative practices during the sixteenth and seventeenth centuries. Using the specific example of ecclesiastical visitation articles, Maguire demonstrates how leaving the name of the church official, as well as the place and year of visitation blank, enabled a 'flexibility of use' for the ecclesiastical jurisdiction, as they could be entered manually and used at any

time. As such, blanks had an 'extended shelf life' and could be used for several years after they had been created.[58] One obvious difference between this example and the type shown in figure 8, is that all the blanks utilised in commissioners' files were handwritten, whereas the visitation articles were printed. While Maguire claims that the insertion of the written hand 'negotiated the fixity of these printed books to a particular time and place', all blanks in my sample were already assigned to a specific bankruptcy.[59] More broadly, Maguire shows how blanks were not an innovation of the printing era, as not only did print replicate manuscript, but 'pre-printed blanks copied pre-written blanks'. For example, manuscript blanks formed a normal part of the procedure for the collection of loans under Henry VI, while pre-written and pre-printed bonds appeared interchangeably in probate records.[60] Looking at Figure 8 in greater detail, we can see that the document itself had already been assigned to the bankruptcy of Vyner, and the year of the examination had been specified as 1684. In fact, the blank spaces only allow the witness to enter their name, the amount they were owed on bond, the date of their examination, the date the bond was executed, and finally, the date the bond became due. This example clearly illustrates the frequency through which Vyner borrowed on bond, as well as the formulaic nature in which certain witnesses were expected to come forward and give evidence. What these formulaic witness statements and blanks demonstrate is the complex role of commissioners, as these individuals were tasked with interrogating both the creditors and debtors of Vyner in an attempt to establish the size and substance of his estate, the contribution money to be paid by creditors, and finally, the dividends to be equally distributed.[61]

[58] Frances Maguire, 'Bonds of Print and Chains of Paper: Rethinking Print Culture and Social Formation in Early Modern England, c.1550 – c.1700' (University of York: Unpublished PhD Thesis, 2017), p.84.
[59] Ibid, p.85.
[60] Ibid, pp.108-109.
[61] The commissioners set the contribution money at only 2d. in the pound on 11 May, before raising this to 4d. in the pound on 11 October. Such a small amount clarifies the fact that the debts due from Vyner were exceptionally large.

Turning to the final two sources, we can see some interesting details about how the commissioners came to make their decisions regarding the legality of the bankruptcy. In the bankruptcy of Thomas Ogrum, a baker from Cambridge, the reasons why this suit was brought before the court, as a well as a Chancery Master, are clearly explained throughout the surviving documents. The commission of bankruptcy was taken out on 22 April 1721, and on Monday 9 May 1721, the creditors chose William Hinson, a grocer, and Thomas Shaker, a gentleman, as assignees. It was at some point after this date that the creditors took out a suit in Chancery against the two assignees, accusing them of mismanaging the bankrupt's estate which had come into their possession. Although the pleadings for this suit have either not survived or are not identifiable through an online search, the Master was tasked with trying to ascertain what funds had come into the hands of the assignees, as well as any dividends paid to the creditors. In this manner, the documents in this reference were presented to the court as part of the evidence for the defendants, hence why it has been catalogued as 'HINSON ex parte'.[62]

The commissioners examined seventy-one witnesses between 22 April 1721 and 12 November 1722, with the bankrupt's debts being estimated at over £1500.[63] The commissioners declared Ogrum a bankrupt after just two witnesses appeared to be examined. The first was the bankrupt's son, Joseph Ogrum, and the second witness was Robert Ashby, both of whom were bakers, with Ashby stating that he was also a servant to the bankrupt.[64] This is an interesting observation, as both of these witnesses appear as a relative and an employee of the bankrupt, demonstrating that commissioners were willing to listen to those close to a debtor in order to declare them a bankrupt. Furthermore, this also demonstrates that

[62] TNA, C104/253, 'HINSON ex parte' (1703-1723).
[63] Ibid.
[64] Ibid, Examination of Thomas Ogrum and Robert Ashby.

by this period, debtors and their acquaintances were willing to accept the benefits that were granted to bankrupts. These initial examinations, as well as the declaration of bankruptcy by the commissioners, take place on 27 April 1721. After this point, the vast majority of witnesses appeared as creditors of Ogrum and simply provided brief statements declaring how much they were owed by the bankrupt, and the reason behind the extension of credit. A representative example can be seen in the examination of William Warde, a cook from Cambridge, who claimed that Ogrum was indebted to him 'before the date and suing forth of the said Commission in Three pounds for 2 Quarters of Wheat sold and delivered by this Deponent to the said Bankrupt and this Deponent saith that he has not received any Satisfaction for all or any part of his said Debt'.[65] This demonstrates that after the initial investigation to declare a debtor a bankrupt had been completed, the focus could turn to the specific claims upon the estate.

The final reference concerns the bankruptcy of George Jackson, an apothecary from Ratcliffe Highway, Middlesex. Compared to the other case studies, this is a relatively short document, as while a commission was taken out on 4 August 1732, only eight witnesses were examined between 12 October 1732 and 25 August 1733. Despite the brevity of the file, it is possible to establish how and why this bankruptcy was brought before the court, due to the supplementary material that survives in the Masters' exhibit. The sole petitioning creditor, Judith Willoughby, was initially declared an assignee, but had subsequently died. As such, the new assignee, John Poulson, had petitioned the court to discover any effects and estate of the bankrupt that had come into the hands of Willoughby's administrator, Stephen Berry. By an order dated 22 March 1737, this matter was referred to a Master, and all surviving documentation relates to this issue.[66] Turning to the proceedings of the commissioners, we

[65] Ibid, Examination of William Warde.
[66] TNA, C104/241, 'Jackson, a Bankrupt' (1732-1741).

again see that Jackson was declared a bankrupt after just two witnesses were examined. The first was Judith Willoughby, who explained that Jackson and his wife, Ann Jackson, were bound to her former husband for £500 plus interest, with the penal sum of £1000 now being due. However, Willoughby provided no details of Jackson's trading activities, or his act of bankruptcy, and it was up to the second witness, a gentleman named Henry Colnett to provide these supplementary details.

Colnett stated that he had known Jackson for over fifteen years, during which time 'he used and exercised the Trade or Business of an Apothecary and in buying and selling Druggs and other things and thereby sought and endeavoured to gain a Livlyhood as others of the same trade used to do'. Colnett went on to claim that 'about Ten or Twelve Weeks ago he the said George Jackson withdrew himself from his late dwelling house in Well Street near Ratcliff highway for fear as this Deponent believes of his being arrested by his Creditors'. Moreover, Colnett had heard that Jackson's wife did often, 'deny him to be at home when any person has come to ask for him altho at the same time he was at home', and 'still absconds'.[67] This is perhaps the most striking example of commissioners declaring a debtor a bankrupt on what seems to be limited information. It was not uncommon for a sole petitioner to execute bankruptcy proceedings, and as Hoppit has shown, between 1710 and 1764, most petitions were taken out by just one creditor, with the overall average being 1.57 petitioning creditors per bankrupt.[68] However, the other two stipulations that needed to be proven to declare a debtor a bankrupt — an act of bankruptcy and the trading distinction — come from the sole testimony of Colnett, who himself was not a creditor, but just a witness. Again, while Hoppit has shown that this declaration occurred in four out of every five examinations throughout the eighteenth century, it seems that in this case at least, the evidentiary threshold was very low

[67] Ibid, Examination of Judith Willoughby and Henry Colnett.
[68] Hoppit, *Risk and Failure in English Business*, p.145.

indeed.[69] In analysing the language used in Colnett's account, we can see absconding described in a purely legal manner. As an acquaintance of Jackson, Colnett is in a position to comment on his trading activities. Yet, this is done simply to confirm the legal status of Jackson as a bankrupt. However, the term absconding was discussed in a multitude of ways within two of the cases, and the next section pays close attention to the various uses of the word, as well as the narrative around absconding.

The Use of the Term 'Absconding'

Absconding and Exile

As outlined in the introduction to the thesis, debtors had both opportunity and motivation to undertake a variety of strategies to avoid arrest for debt and persistent demands for repayment. Many legal regimes throughout the early modern period identified absconding as a crucial obstacle and sought to prevent and eliminate it from the debt-recovery process. Perhaps the most obvious comparison to absconding can be seen in debtors taking refuge in a sanctuary. While an act of 1697 technically abolished sanctuaries, several remained accessible to debtors well into the eighteenth century. Such sanctuaries could be exploited by debtors fleeing a writ of arrest, or alternatively, some debtors moved in order to force their creditors to reach an agreement. Nigel Stirk has shown how arguments in favour of sanctuaries focused on two key areas: 'either the shortcomings of the system of imprisonment in terms of the effect on creditors, or the detrimental effects on the debtor'.[70] Indeed, in

[69] Ibid, p.36.
[70] Nigel Stirk, 'Fugitive Meanings: The Literary Construction of a London Debtors' Sanctuary in the Eighteenth Century', *British Journal for Eighteenth-Century Studies*, vol.24, no.2 (2001), pp.175-188, p.176; see also Nigel Stirk, 'Arresting Ambiguity: The Shifting Geographies of a London Debtors' Sanctuary in the Eighteenth Century', *Social History*, vol.25, no.3, (2000), pp.316-329; Philip Woodfine, 'Debtors, Prisons, and Petitions in Eighteenth-Century England', *Eighteenth-Century Life*, vol.30, no.2 (2006), pp.1-31; James R. Hertzler, 'The Abuse and Outlawing of Sanctuary for Debt in Seventeenth-Century England', *The Historical Journal*, vol.14,

analysing representations of the Mint in Southwark, Stirk shows how sanctuaries were often linked with 'the seediest areas of London, such as Drury Lane, or institutions for social outcasts, such as Newgate or Bedlam'. It is interesting to again see debtors linked with insanity, but what is important for the purpose of this chapter, is that literary representations of the Mint often associated it with colleges, or a foreign island, or in certain circumstances, hell. What all of these representations have in common is their association with what Stirk classes 'spaces of difference'. In this manner, sanctuaries and absconding from creditors were associated with places of exile and unfreedom.[71]

Turning to the actual use of the word absconding, it was employed in a variety of ways, both in a legal sense, as well as taking on wider social and cultural implications. Indeed, the etymology of the word 'abscond' demonstrates that its origins are unclear, originating from the French word 'absconder', or possibly the Latin 'abscondere'. While rare in modern usage, during the early modern period it was employed widely to connote being hidden from view, or to flee into hiding or an inaccessible place, 'typically to elude a creditor, escape from custody, or avoid arrest'.[72] As such, it is difficult to trace the origin of the word, and to determine whether it was first applied in a legal sense and then appropriated into common language, or vice versa. We have seen throughout the thesis that the legal terminology was widely employed to demonstrate that a creditor had committed an act of bankruptcy in order to establish a coherent timeline of failure. However, during this period the word was deployed in a number of ways, and depending on the circumstances, could carry different connotations.

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no.3 (1971), pp.467-477; R. H. Helmholz, *The Ius Commune in England: Four Studies* (Oxford: Oxford University Press, 2001); R. L. Brown, 'The Minters of Wapping: The History of a Debtors' Sanctuary in Eighteenth century East London', *East London Papers*, vol.14, no.2 (1972), pp.77-86.

[71] Ibid, pp.178-180.

[72] OED.

When we look at contemporary publications and commentary, the notion of absconding was closely tied to concepts of criminality and punishment. Perhaps the most obvious example of this form of absconding can be seen in the work of Thomas Gent, a printer and publisher active for much of the eighteenth century.[73] In his final publication, *Divine Justice and Mercy Displayed* (1772), which was 'Originally written in London at the Age of 18; and late improved in 80', Gent chronicled the life of Judas Iscariot.[74] In his early life, Gent claimed that Judas killed the King's son in a drunken duel and in 'stealth' was forced to flee from the state, to the place of his birth, Joppa, as 'Death and Fury follow at his Heels'. In Joppa, Judas killed his father and eventually married his mother, and it is an exchange with his mother where Judas explains the path his life has taken:

> But I, grown up, the Prince, his Son, did kill;
> And, flying chanc'd your Husband's Blood to spill.
> These Crimes thro' Passion: But another Sort
> Made you my Spouse, as't were thr' Fortune's Sport.
> Thus, twice absconding, wilful, thro' my Sins.
> What's to be done, when Sorrow fresh begins?
> For now you've found, what re'terates sad Greif.
> Your Son, your Spouse, a Murderer, and Thief![75]

Gent's utilisation of the term absconding demonstrates its association with criminality, sin and fleeing punishment. This is especially the case as it is appropriated to such a notorious character as Judas, who fled his initial crime against the King's son in 'stealth'. Such an appropriation sees an immoral form of absconding, whereby Judas had forced himself into a state of exile specifically to avoid the consequences of his crimes.

In turning to the commissioners' files, it is worth analysing how commissioners utilised the term in their assessment of a debtor's circumstances. Returning to the bankruptcy of Richard

[73] H. R. Tedder, revised by C. Bernard L. Barr, 'Gent, Thomas' (1693-1778), *ODNB.*
[74] Thomas Gent, *Divine Justice and Mercy Displayed* (York: 1772).
[75] *Divine Justice and Mercy Displayed*, pp.12-14.

Shute, in their memorandum, the commissioners succinctly list the legal requirements to which they had judged Shute a bankrupt: Shute got his living through 'buying and Selling in the business of a Cooper', he was indebted to the 'sume of Five hundred pounds', and did 'abscond and doth still abscond'.[76] We clearly see that the commissioners had established that Shute was a trader, owed more than the £100 threshold, and had committed an act of bankruptcy. These statements are presented in a very matter-of-fact manner, being utilised in this way to establish the three main legal principles, including the legal principle of absconding as an act of bankruptcy. In contrast, when we turn to the witness statements, we see a much more detailed description of Shute's activities. The first witness, Samuel Roach, stated that on 20 October 1719 he lent the bankrupt £400, which was secured on bond, in order to aid the bankrupt in carrying on his business. However, since the bond had come due, Shute had 'absconded to avoid arrest', and Shute, as well as other competing creditors, had taken the goods from Shute's house 'in the night time and in a Clandestine manner'.[77] Several witnesses further clarified that multiple suits were taken out against Shute in the common law courts for actions upon debt, with Thomas Rosse claiming that three creditors received a judgement against Shute on 19 September 1720, and ever since that date Shute had absconded. Again, Rosse claimed that the goods in Shute's house were removed in a 'Clandestine manner'.[78]

John Wint, a sergeant at law from Mare in Bristol, claimed that, rather frustratingly, Shute continued to avoid arrest, as 'whenever he went out he went the by and most private way he could'. However, two months before his examination, Wint finally managed to arrest Shute at ten in the evening, and by four in the morning, Shute had paid the outstanding balance and

[76] TNA, C104/226, 'SHUTE, a Bankrupt' (1720-1721), Declaration by Commissioners.
[77] Ibid, Examination of Samuel Roach.
[78] Ibid, Examination of Thomas Rosse.

was released. Ever since his release, Shute had 'absconded and absented himself from the said City to avoid arrest'. Despite his continued absconding, two separate writs of attachment were issued out of the Court of Record in Bristol, and Wint had managed to attach the 'goods and Chattels' of Shute on behalf of the plaintiffs in these suits, which in a 'Clandestine manner had been removed from the said Richard Shute's house in Bristol'. This had been done to 'conceal and secure the same from being attached', but at the time of his examination, Wint had all of these goods safely in his possession.[79] Finally, Elizabeth Evans, wife of Abraham Evans, a mariner from Bristol, stated that in May 1720, Shute and his family left their home in Bristol and went to a country house he held at Milton, in Somerset. In October 1720, Evans claimed that the bankrupt's wife returned to Bristol and 'park't up and sent away part of the said Household goods', which were removed 'in very great Hurry' between 'nine or ten at night and One in the morning'.[80] What is clear from these witness statements, is that there is an emphasis placed upon the hidden, clandestine, and secretive nature of Shute's activities. Furthermore, Shute is seen to have withdrawn from public view and acceptable social activities. As such, it is worth pausing on these assessments, and attempting to analyse how such descriptions were utilised in wider society.

Examples of absconding being associated with being removed from accepted social and cultural activities are manifold during this period, but a few explicit examples will demonstrate this clearly. In a 1679 account of Father Andrews, a Jesuit from Hardwick in Monmouthshire, the author claimed that upon discovery of the 'late Plot', and warrants being issued for his arrest, Andrews was 'forced to abscond … and fled into an adjacent Wood, where he lay *Incognito*, for the space of Three Months'.[81] Similarly, in a pamphlet discussing

[79] Ibid, Examination of Samuel Roach.
[80] Ibid, Examination of Elizabeth Evans.
[81] J. D., *A True Narrative of that Grand Jesuite Father Andrews* (London: 1679), p.3.

three murders that took place within the space of a week in 1692, another anonymous writer stated that the third victim, was 'forced to Abscond and Live *Incognito*', due to the violence with which law suits were prosecuted against him.[82] This example is particularly illuminating, as it was the victim, rather than the perpetrator, who was forced to abscond due to completely unrelated law suits. In a pamphlet vindicating Presbyterians in Scotland under Charles II, Gilbert Rule spoke of the oppressions of 'simple crazed People', who were 'forced to abscond all day, and at Night when others were at rest, seek for that Refreshment which Nature required, whereby they were deprived of all Civil Society'.[83] Perhaps the most well-known publication that illustrates this point can be seen in Jonathan Swift's satirical work, *A Tale of a Tub*, whereby Swift describes one character, Peter, who 'had lately done *some rogueries*, that forced him to abscond; and he seldom ventured to stir out before night, for fear of bailiffs'.[84] What is clear from these examples, is that the association with absconding and becoming 'incognito', or hidden in the day time, was not simply seen in terms of debt recovery, but was commonly utilised in wider society. Such a notion of exile and maintaining privacy was not explicitly linked to immorality, but rather being forced into making a difficult decision.

Indeed, in turning to the bankrupt himself, Shute did not engage with his act of bankruptcy in anywhere near as much detail as the other witnesses. In his petition to the Lord Chancellor, Shute claimed that to his knowledge, he never committed an act of bankruptcy. Shute was examined on four separate occasions, but he only mentioned the specific details of this act in passing, as upon his third examination, he simply stated that he 'did not leave off trading … untill the suing forth of this Commission'.[85] While Shute did not explicitly discuss his

[82] *The Cry of Blood; Or, The Horrid Sin of Murther Display'd* (1692).
[83] Gilbert Rule, *A Vindication of the Presbyterians of Scotland* (London: 1692), p.24.
[84] Jonathan Swift, *A Tale of a Tub*, twelfth edition (Edinburgh: 1750, originally 1704), p.132.
[85] TNA, C104/226, 'SHUTE, a Bankrupt' (1720-1721), Examination of Richard Shute.

absconding in virtuous terms, he implicitly implied that he was forced into this situation due to his financial circumstances. Shute claimed that when his father died about five years ago, he was only left a modest legacy of 'Fifty pounds and his stock in trade and Implements in the trade of a Cooper', which were of a 'small value'. Furthermore, Shute claimed that six weeks after the death of his father, he married Mary Dymock, the daughter of Thomas Dymock. However, Shute clarified that as he did not gain Thomas' permission for the marriage he received no marriage portion, while Mary only received £100 as a legacy from her grandfather, and £50 from her uncle, Elias Dymock. Shute stated that he was not aware that Mary was entitled to any money whatsoever, as her father only ever gave her several 'small summes of money', and at the time he married her she had no ready money, 'save a little pockett money'.[86] While he agreed that he was indebted over £500, Shute pleaded absolute poverty, suggesting he had 'no ready money save about 30s. in his pockett and that this Deponents wife hath not any ready money save about five shillings in her pockett'. Shute explained that at the beginning of the commission, he held about 'thirty Guineas ready money', but most of this was swallowed up by solicitor's fees, as he had paid Walter Edwards thirteen guineas 'towards the Charges of prosecuting the Petition by this Deponent … and three pounds to the Undersecretary of the Lord Chancellor'. As such, Shute explained that he needed to borrow money to carry on his trade as he had become overextended through his business dealings.[87] In a final examination, Shute claimed that his wife began 'pressing this Deponent for money', and the situation had become so bleak that she was forced to sell the family's silver plate, which was done 'without any knowledge or consent of this Deponent'.[88]

[86] Ibid.
[87] Ibid.
[88] Ibid.

In returning to the methodological approach applied to depositions, Lawrence Stone has warned against the repetition of words or phrases in witness statements, which should alert the modern scholar to the role of the clerk in shaping narratives.[89] This is a valuable point and we need to be attuned to the role of commissioners as legal scribes in this process, especially when we are analysing one specific word or turn of phrase. Yet, rather than attempting to 'filter out' the legal bureaucracy, it is more useful to contextualise these statements within the commissioners' role in formulating, listening, and transcribing answers for their personal use. In this manner, we see the descriptions *of* Shute being presented as an immoral criminal who is recalcitrant rather than being unable to repay. When he was eventually arrested, he was able to quickly and efficiently find the full amount of the debt with which he was charged, before again clandestinely absconding. The specific, and on the surface, evocative language in these accounts is utilised in order to strengthen the claim that Shute had committed an illegal act of bankruptcy, by absconding from his debtors, for fear of arrest. The use of the term absconding therefore has a dual purpose: it demonstrated that the creditors, or those speaking on behalf of the creditors — i.e. Wint a sergeant-at-law — held a disdain for such an act, while simultaneously providing evidence of the criminality of Shute, a fact which was necessary to prove Shute a bankrupt and disperse his assets. Shute had simultaneously committed an illegal act, while at the same time, was an immoral individual. The two were closely connected in the eyes of the creditors.

However, when we consider Shute's utilisation of the term, we can see a different connotation being employed. Throughout these four examinations, Shute is attempting to outline his desperate financial state with reference to specific difficulties: he inherited very little, made no financial gain from his marriage, his personal trade had been in decline, and

[89] Stone, *Road to Divorce in England 1530-1987*, p.31.

finally, the mounting costs of legal fees had wiped out his ready money. Ultimately, he needed to borrow and extend his credit to keep his business afloat, all of which were practical examples to which the average trader — or indeed, average person — could empathise. As such, it was these practical circumstances which led to him being forced into an uncomfortable situation, whereby he had to make the difficult choice to secrete himself and abscond from his creditors. Finally, Shute explained quite clearly that it was an act of circumstance, whereby he was left with very little choice in the path that he took. This further demonstrates how the commissioners were required to listen to a variety of witnesses, employing a range of terms to describe what was essentially a straightforward act. In this sense, a more nuanced understanding of the term absconding is required in order to fully appreciate its utilisation as a term in bankruptcy proceedings. Indeed, while Shute did not explicitly discuss the details of his act of bankruptcy, the file below provides a rare example of a bankrupt giving a detailed account of his absconding.

The Self-Presentation of Absconding

The final section analyses the self-presentation of absconding, and the way in which it was utilised in a virtuous and honourable manner. To the modern reader, it is difficult to reconcile these two dichotomies, as to act honestly and to abscond and conceal yourself from creditors seem to be mutually exclusive. However, there are numerous examples within contemporary commentary of individuals employing the term within a process of self-representation, whereby the discourse invoked is one of honour and virtue in an attempt to demonstrate how they had been forced into an impossible situation. In a 1689 petition to parliament, several market traders complained that the owners of the stalls were charging excessive fines and rents, and being unable to pay such demands, were ‘forced to abscond from the said Markets,

to the great Impoverishment of them and their Families'.[90] In this sense, being forced into a situation of absconding was a type of aberration from an accepted social norm. This is perhaps best illustrated through the various petitions delivered to parliament by James Percy, who claimed a legal right to the Earldom of Northumberland. In 1680, Percy explained that during the civil war, he was 'forced to Abscond in *England* for his Loyalty, (and Travel for some Years) and had not an Opportunity to acquaint himself with the Family of *Northumberland*, so as to be informed of his Pedigree'. However, 'as God hath in mercy restored his Majesty to His Crown and Kingdoms, even so ought the King in Justice to restore every Loyal Subject to the Birth-right, Title and Inheritance of his Ancestors'.[91] One of the central claims of this petition, is that after absconding — a state of abnormality, likened to the civil war — there is a desire to return to normality. In both of these examples, the petitioners were portraying their state of exile as temporary, and through the potential intervention of parliament, they would return to a state of well-being, undertaking a prominent and positive role within society. Within these accounts there is an implicit link to virtue, as we begin to see the beginnings of a virtuous notion of absconding. However, there are several examples where virtue is explicitly linked to an individual who has been forced to abscond to remain reputable.

In his history of writers and bishops educated at the University of Oxford, Anthony Wood employed the term 'abscond' frequently to describe the lives of several notable and respectable individuals, who for one reason or another, were forced into a political or religious exile. Wood explained how shortly after 1641, Sir Walter Raleigh was 'persecuted,

[90] *To the Honourable House of Commons, Assembled in Parliament, the Humble Petition of Divers Persons of Several Callings Who Keep the Markets in London in Behalf of Themselves and Hundreds More* (London?: 1689).
[91] James Percy, *This Book Makes Appear the Claim, Pedigree and Proceedings of James Percy Now Claimant to the Earldom of Northumberland* (London: 1680), p.3.

plunder'd, and forced to abscond for his Loyalty to his Prince'.[92] Similarly, Nicolas Saunders, the most 'notable defender of the R. Catholic cause in his time', came into serious difficulties after failing to encourage the Irish to take up arms against Queen Elizabeth. Ultimately, Saunders was 'forced to abscond in caves, dens, woods, &c.' and after two years in such a circumstance, and not being able to hold out any longer, 'did miserably perish by hunger and cold'.[93] Several writers apply this term to Edward Hyde, 1st Earl of Clarendon — Lord Chancellor 1658-1667 — who was impeached and forced into exile in November 1667.[94] Commenting in 1669 on the strange political atmosphere of the past five years, William Carr stated that the late Lord Chancellor, was 'forced to abscond himself from the peoples rage'.[95] Aurelian Cook observed that 'falling into disgrace with the Parliament, [Clarendon] was forced to abscond; and leaving that Office, which he had so long managed, with advantage to the King, and honour to himself, retired into *France,* where he lived in a voluntary Exile 'till he died'.[96] Perhaps the most notable example of a writer explaining how previously great men were forced into this condition can be seen in Matthew Henry's *An Exposition of the Old and New Testament*, published in 1727. In this publication, Henry explained how absconding was not simply the purview of the dishonest and guilty, as when a 'good king' became 'frowned upon at court', they were frequently forced to abscond. Henry advised that 'good men, and good ministers, must expect bad times in this world, and prepare for them'.[97] Within these examples, we can see how notable individuals were forced to abscond in an attempt to maintain, or eventually return to, a reputable position.

[92] Anthony Wood, *Athenae Oxonienses an Exact History of all the Writers and Bishops who have had their Education in the Most Ancient and Famous University of Oxford* (London: 1692), p.49.
[93] Ibid, p.162.
[94] Paul Seward, 'Hyde, Edward, First Earl of Clarendon' (1609–1674), *ODNB.*
[95] William Carr, *Pluto Furens and Vinctus, or, The Raging Devil Bound a Modern Farse* (Amsterdam, 1669).
[96] Aurelian Cook, *Titus Britannicus: An Essay of History Royal: In the Life and Reign of His Late Sacred Majesty, Charles II* (London: 1685), p.342.
[97] Matthew Henry, *An Exposition on the Old and New Testament* (London: 1737), p.13.

Returning to the bankruptcy of Thomas Ogrum, the bankrupt and his son, Joseph Ogrum, were examined on three separate occasions, and their answers contain rich, individual detail regarding Ogrum's absconding. In comparison to the Shute case above — whereby the actions of the bankrupt are described from without — we gain a glimpse into the self-presentation of the bankrupt and his family throughout the proceedings. Ultimately, such a contrasting approach sheds light on the multitude of ways in which absconding was seen and portrayed by individuals in different personal circumstances. In this example, we see a detailed discussion of absconding described and put forward by the bankrupt and his family to the listening commissioners. In his first examination, Joseph, who gave his age at 'Twenty years and upwards', stated that he had always lived with his father. He further confirmed that his father was a baker, 'and did thereby Endeavour to gitt an honest Livelyhood' through the buying and selling of large quantities of corn and grain. Joseph explained that his father simply contracted more debts than he was able to pay, and while in his company on 12 December 1720, his father made a 'Computation' of all his outstanding debts. Ultimately, the bankrupt estimated his total debt to be over £1500, while at the same time, his effects did not exceed £500.[98] The account provided by Joseph of his father's realisation of the seriousness of his situation is extremely illuminating and worth quoting at length, as his father:

> could not see how he the said Thomas Ogrum could stand his Ground and advised with this Deponent whither he the said Thomas Ogrum should write to his Several creditors to gitt time to pay their Respective Debts and this Deponent not being Capiable to give directions to the said Thomas Ogrum how to act in that affair he the said Thomas Ogrum did Immediately thereupon goe from his Dwelling house in Cambridge and kept from there untill the Saturday told which this Deponent Conceives was done to avoid the Demands of his Creditors and for fear of being arrested.[99]

[98] TNA, C104/253, 'HINSON ex parte' (1703-1723), Examination of Joseph Ogrum.
[99] Ibid.

Almost immediately upon his return to Cambridge on Saturday 17 December, Thomas Ogrum was arrested at the suit of one of his creditors, Thomas Poulter, in an action for £100. Thomas was detained until 1pm the next day, when he was released after Joseph paid £50 as part satisfaction for the debt. Since his release on Sunday 18 December, the bankrupt had 'kept himself Concealed' in order to avoid further arrest.[100]

Joseph Ogrum was first examined on 8 May 1721 and stated that for over twenty years he had been a baker, dealing in the buying and selling of corn. He corroborated his son's account, by clarifying that 'by reason of loses and misfortunes he this Deponent became 'incapable to pay his Debts'. Ogrum clarified that around 12 December, he made a 'Computation of the Debts due from this Deponent to his several Creditors', estimating the total to be above £1500, while his effects would not exceed £500. In order to 'avoid the demands of his Creditors and for fear of being Sued for his Debts' Ogrum did 'leave his dwelling house in Cambridge aforesaid and go to the City of London', not returning until 7pm on 17 December. He was promptly arrested between 10pm and 11pm that same evening, and since his release the following day until his first examination, Ogrum had 'absconded from his Creditors for Fear of being arrested by them'.[101]

These examinations are striking for a number of reasons. Firstly, the account of coming to a 'computation' for the exact level of indebtedness is rare in bankruptcy proceedings. Often, bankrupts simply claim ignorance of the specific details of their debts, or suggest that at the time of executing the commission they were either capable of repaying their creditors, or simply needed more time to do so. Coupled with the query from Thomas to his inexperienced son regarding writing letters to his creditors, the bankrupt comes across as almost naïve in

[100] Ibid.
[101] Ibid, Examination of Thomas Ogrum.

regard to established bankruptcy procedure, as well as the harsh penalties that could await him. This is further clarified by the fact that even after absconding, Thomas was only absent for five days, being arrested within four hours of his eventual return. We have already seen in the previous case, how Shute was able to avoid his creditors for an extended period of time. More broadly, the inability to find and arrest debtors was a common complaint throughout this period. However, the most revealing aspect of these examinations is the language utilised in an attempt to place the dealings of Thomas Ogrum, as well as his eventual failure, in terms of a virtuous and morally upstanding trader. Joseph suggested that his father endeavoured to get an 'honest' living through his trade, and simply failed due to unfortunate circumstances, something which is mirrored by the bankrupt. Furthermore, the desire to write to his creditors can be viewed as attempting to act in a virtuous manner. Indeed, it is clear that the bankrupt and his son were attempting to explain that Ogrum found himself in severe financial difficulties through no fault of his own, simply experiencing 'loses and misfortunes'. Faced with the reality of the situation, Ogrum held no alternative but to abscond in order to avoid arrest, which can clearly be linked to notions of exile discussed above.

However, what is particularly interesting in this case, is the manner in which once placed in a position of exile, Ogrum was still able to raise and utilise credit as a trader. Indeed, there are several examples of mutual dealings having taken place between witnesses and the bankrupt, and there are six examples whereby the bankrupt is actually a creditor in this situation. For example, as a glover named John Redstone explained, he was 'Justly and truly Indebted to the said Thomas Ogrum the Bankrupts estate in Thirty five Shillings for Bread and other Bakers Goods'. Yet, the bankrupt was indebted to Redstone in the amount of 5s. 2d., 'for Gloves by this Deponent Sold and Delivered to the said Bankrupt', meaning there remained

29s. 10d. due to Ogrum.[102] Although the bankrupt was only a creditor for a total of £6 10s. 4d., it does demonstrate that witnesses not only appeared as creditors, but also as debtors throughout the process. An examination of the bankrupt's credibility in relation to his failure can be taken a step further by returning to the examinations of the bankrupt's son, Joseph.

Joseph's second examination was taken on 9 May and concerned the amount of money he had received from certain individuals since his father's absconding. Joseph explained that since 17 December, he had received a total of £128 8s. from various people for the benefit of his father. Since that time, he had paid out £76 13s. 2d. to various creditors, as well as paying the commissioners £90 4s. 9d. 3 farthings, which he declared was all he had belonging to the bankrupt.[103] To put that in perspective, an indenture dated 12 November 1722, explained that through contribution money and the sale of the bankrupt's estate, the assignees had raised £713 10s. 4½d., with the commissioners paying a total dividend of £135 2s., at the rate of two shillings in the pound.[104] We have already seen how upon the arrest of his father, Joseph claimed to have raised £50 in order to secure his release. In order to achieve this, Joseph explained that his father borrowed fifteen guineas from a Master Greene, and £27 from Thomas Stanton.[105] This is an interesting statement, as despite his arrest and imprisonment, Joseph was able to raise funds through borrowing money directly from private individuals, which appears to have been done on behalf of his father. However, in order to understand these credit relations, it is important to put Ogrum's credibility within the established timeline of undisputed events.

[102] Ibid, Examination of John Redstone.
[103] Ibid, Examination of Joseph Ogrum.
[104] Ibid,
[105] Ibid, Examination of Joseph Ogrum.

Ogrum absconded on 12 December 1720, was arrested on 17 December, and released the following day. Yet, the commission was not executed for a further four months, finally being taken out on 22 April 1721. It was within this time frame that Joseph was able to continue to raise money to pay his father's bail, as well as paying other debts. It could be argued that knowledge of the bankrupt's financial difficulty was not yet well known within the local community, only coming to be clarified by the execution of the commission in April. However, we have previously seen in chapter two that there arose several debates and disagreements about the circulation of knowledge of a commission of bankruptcy, and its effectiveness in advertising and calling forward creditors. Furthermore, the time between the act of bankruptcy and the execution of a commission led to a degree of uncertainty in the legal status of the bankrupt. It could also be the case that creditors were fully aware of his stock, lack of ability to raise funds, and his continued absconding, and simply granted him credit anyway. This seems unlikely, and perhaps the truth lies somewhere in between these two extremes. Returning to Craig Muldrew's assessment of credit, the evidence in this case seems to support the argument that it was the household who were the main economic unit of assessment, as the bankrupt's son was clearly able to raise funds on his father's behalf.[106] However, as this happened while Thomas was absconding, it seems to suggest that something other than his reputation was the sole motivating factor. Ultimately, as Alexandra Shepard has suggested, the assessment of credit became unstable during this period, and it may be that individuals were assessing the bankrupt's credibility in relation to his son being able to raise and continue to pay off debts.[107] What is clear, is that the amount raised only seemed to contribute to overcome short-term problems, as while Thomas was able to make bail, he could not carry on trading openly and publicly for fear of arrest. Furthermore, as the first

[106] Muldrew, *The Economy of Obligation*.
[107] Shepard, *Accounting For Oneself*, p.2.

dividend showed, a measly two shillings in the pound was unlikely to satisfy the creditors' demands for repayment. Ultimately, our understanding of credit in this example needs to be placed within the timeline of Ogrum's failure, as both creditors and debtors seemed to be engaging with the family for four months between the act of bankruptcy and the execution of the commission. It was only when the commission was taken out that confidence in Ogrum's credibility had completely disappeared.

It is within this context that the explanation of the computation must be placed, as rather than being a naïve and helpless debtor, both father and son present this estimation in terms of an unfortunate trader, who was well aware of the specificities of his financial details, and was simply faced with no rational alternative but to abscond. In a similar manner to Shute, Ogrum and his son provided practical details of the reasons why they had failed. Yet, they take this a step further in their explicit reference to absconding. In this case, it seems that Ogrum had simply run out of time to act honestly and was left with no alternative but to abscond at the final moment.

Conclusion

This chapter has paid close attention to the role, jurisdiction, and work of commissioners in the bankruptcy process. In particular, the active manner with which commissioners investigated a range of witnesses has provided the context to analysing the written documents which have survived. Specifically, the core element of a commissioner's role can be seen in them formulating questions to interrogate witnesses, listening and interpreting their answers, and creating a written record of this process. Indeed, commissioners held a wide scope with which to undertake these tasks, leading to a high level of individuality about bankruptcy

proceedings. Because of the poor survival rate of the documents, commissioners' files have rarely been utilised as a source of evidence for this period, with much of the existing scholarship focusing on the jurisdiction and authority of commissioners in relation to other courts. However, by analysing these documents in a careful and considered way, it is possible to highlight specific details of a commission of bankruptcy. While advice manuals and early modern commentary are useful in providing a broad overview of such a procedure, the analysis above demonstrates the divergencies between each individual commission. Examples such as the way in which witnesses were questioned, how commissioners came to a decision, and the narratives provided by witnesses, grant us a more nuanced understanding of the path a commission underwent, as well as how these 'informal' documents were utilised, both within and outside Chancery.

Perhaps the most fruitful avenue of investigation within these sources can be seen in the formulation and utilisation of specific language relating to personal failure. As commissioners' files closely resemble depositions in style and form, this chapter set out to apply the same set of methodological questions to these sources. Again, particular focus was paid to the ways in which the work of the commissioners had impacted on the creation of the final documents that have survived. In this manner, we can see the variety of ways in which absconding was utilised within these investigations. Particular attention has been paid to how absconding can be seen in relation to notions of exile from accepted social and cultural norms, as well as acceptable places and activities within society. While commonly associated with immorality and crime and punishment, a more nuanced understanding of absconding is needed, as often individuals invoked the term in a voluntary manner, demonstrating how they had been forced into making a difficult and life altering decision. As such, it became utilised as part of the language of self-description, as a range of people employed it to denote concepts such as virtue and trustworthiness. As we have seen, this notion was also ascribed to

notable individuals who were forced into a political or religious exile, or who had fallen from better times to times of hardship, demonstrating a common appropriation of the term. All of these interpretations were present and commonly used throughout this period, and it is important to bear in mind these complex and multifaceted uses of absconding when analysing the use of language in commissioners' examinations and witness statements. Ultimately, as we have seen in the previous chapter, the use of specific and evaluative language altered depending on the circumstances. As creditors sought to describe the bankrupt as an immoral individual who had also committed a criminal act, bankrupts and their family members utilised the term to describe an undesirable act, which bore no resemblance to the character, credibility, or virtue of the bankrupt themselves.

Chapter Five: The Finality of Enrolled Decrees

Introduction

Once a cause came to be heard in open court, the presiding judge would make their decision, which would be recorded verbatim by a register of the court in the entry book.[1] The parties then had the option to enrol a decree, whereby the text from the entry book was prepared on paper in the form of a docquet — a formal memorandum or register of a legal judgement — setting out the decree verbatim. After the docquet was checked by the initiating party's Six Clerk — or his deputy — then it was signed by the Lord Chancellor.[2] Turning to the cataloguing of these documents, final decrees can be found in the entry books, while enrolled decrees were produced on a separate Chancery roll, creating two series at The National Archives: C78 and C79. Some 2,605 decree rolls now survive for the history of the court, and each roll may contain anything from a single long decree to twenty decrees. In total, these rolls contain around 35,000 decrees, with the largest single concentration in the seventeenth century.[3] As explained by Alfred Kingston, a PRO officer writing in 1866, the decree rolls themselves are not in chronological order: 'Some years ago a large number of inrolments of docquets were found scattered about in various places in the Rolls Chapel … It was found impossible to discover how they had accumulated, from whence they had come, or indeed anything beyond the fact that there they were'. As such, it was decided that the best course was to create a series without regard to chronological sequence, simply so that the surviving documents might be preserved 'in some kind of order'.[4] More recently, Beresford has claimed that had the Chancery clerks 'conspired to keep the contents privy until Domesday',

[1] Series C33 at TNA.
[2] Horwitz, *A Guide to Chancery Equity Records*, p.85.
[3] Ibid, pp.85-86.
[4] Preface to finding aid IND 1/16961A, quoted in Ibid, p.87.

they could hardly have done a better job.[5] Fortunately, the ongoing work of the University of Houston's Anglo American Legal Tradition (AALT) has made these documents far more accessible. Undertaking the arduous task of digitising the entirety of the C78 and C79 series — which runs from 1534-1903 — the AALT has also placed these enrolled decrees in chronological order.[6] Within the online description of each entry, the names of the parties in a suit are provided, as well as frequently giving their place of residence and occasionally a short description of subject matter. As such, it is possible to do a key word search for the term 'bankrupt', which returns forty-three enrolled decrees between the years 1684-1745, and forms the sample for this chapter.

A key theme which runs through the thesis is the construction of the plot, story, or script, which has been created at each stage of proceeding. The summaries of the case highlight what the court felt were the pertinent legal issues to be decided, while the legal decision was presented orally, and transcribed by a Chancery clerk. In this manner, decrees need to be treated as a unique source from the preceding chapters, as the narrative presented is entirely that of the institution of the court, representing the legal ideal of equity and justice. Furthermore, the documents that survive have been created by the bureaucracy of the court. This is in stark contrast to the preceding chapters, whereby documents were created and utilised in written form by a wide range of individuals, such as parties to the suit, legal representatives, witnesses, bankruptcy commissioners, and officers of the court. As such, these are complicated documents, as the presiding judge would summarise the previous stages of proceeding — the written documentation and evidence supplied by each side — before providing a legal decision on how the case would proceed or conclude. This final point

[5] M. W. Beresford, 'The Decree Rolls of Chancery as a Source for Economic History, 1547-c. 1700', *The Economic History Review*, vol.32, no.1 (1979), pp.1-10, p.4.
[6] Upon date of searching, the AALT has completed the dates 1534-1880, 'Chancery Final Decrees', AALT: University of Houston, stable URL: http://www.uh.edu/waalt/index.php/Chancery_Final_Decrees accessed 26/02/2019.

is of crucial importance when analysing these documents, as there is often an assumption that a final decree would conclude the central issue at hand. However, it is unhelpful to think of a decree in early modern Chancery creating a clearly defined winner and loser in such a way that the case could be closed in a neat and tidy fashion. This is especially the case in bankruptcy suits where, in many circumstances, the collection and distribution of goods or an estate was ongoing.

In attempting the difficult task of trying to define a 'dispute', the legal anthropologist Simon Roberts has suggested that 'we could treat as disputes those occasions where one feels he has suffered an injury, sees another as to *blame* and confronts him with *responsibility*'.[7] This notion of a dispute, whereby one party assigns blame and subsequently seeks some sort of redress against a guilty or responsible party, seems to be commonly applied to legal cases. In modern usage, the terms 'legal dispute' and 'legal case' seem to be used as synonyms for one another, especially in civil jurisdictions. However, the fact that many Chancery cases did not end in a distinctly definitive manner is well known to modern scholars. For example, Horwitz states that it was not uncommon for hearings to end 'without a definitive resolution, at least in detail'.[8] In this sense, while enrolled decrees constitute the final stage of a proceeding in Chancery, they cannot provide a form of narrative closure to cases involving bankruptcy. However, while scholars are aware that many cases did not conclude in such a fashion, they still suggest that the court declared a winner and a loser. For example, Horwitz utilises the terms 'winning party' or 'losing party' throughout his publication on Chancery records and practice.[9] Similarly, while Jones frequently talks of the 'adversant party', he also utilises

[7] Simon Roberts, 'The Study of Dispute: Anthropological Perspectives', in John Bossy ed., *Disputes and Settlements: Law and Human Relations in the West* (Cambridge: Cambridge University Press, 1983), pp.1-24, p.7, my italics.
[8] Horwitz, *A Guide to Chancery Equity Records*, p.22.
[9] A useful example can be found in the following sentence: 'we find at least as early as the 1690s that Masters, in taxing costs, would on occasion make provision (by consent) that if the *losing party* paid the assessed costs

phrases such as the 'winning attorney' or the 'successful party'.[10] In reference to bankruptcy suits, this notion is unhelpful, and in many examples actually incorrect. With multiple parties claiming a legal right to recover debts — often through an estate, goods, or paper instruments — the court was frequently placed in the position of arbitrator, assessing each individual claim and attempting to render a fair and equitable judgement for each individual. This is again in contrast to the types of cases, and the form of credit, utilised by Craig Muldrew in his research. To recap, Muldrew sought to establish 'how long most credit was extended before creditors asked for payment'.[11] As such, Muldrew utilised straightforward suits concerning single instances of debt-recovery which had a clearly identifiable winner and loser.

However, the concept of appropriating blame, and seeking to establish a winner and loser is often misleading. As a Chancery Commission explained before parliament in 1826:

> The judgement for a plaintiff in a court of equity is not, as in a court of law, simply a decision upon a definite point in his favour; but, in almost all cases in which he succeeds, the decree to which he is entitled, embraces several points, finally disposes of some, and directs various enquiries or accounts, with a view to the determination of others; and it is not easy nor always possible for the Registrar to write down at once full minutes of such a decree as ought to follow the judgement which the court has given.[12]

This is a useful quote, as we have seen throughout the thesis how a suit could be referred to a Master to determine a specific aspect of the case, while a definitive point of law could be tried in the common law courts. As such, this final stage of proceeding is far more complex than many scholars have recognised. Indeed, legal historians often utilise the final stage of proceeding to illustrate how the courts had interpreted certain aspects of statute law,

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promptly, the *winning party* would forego enrolment, with the result that the *losing party* might reduce its obligation by the amount that an enrolment would otherwise have cost', Ibid, p.24, my italics.
[10] Jones, *The Elizabethan Court of Chancery*, p.297, p.300.
[11] Muldrew, *The Economy of Obligation*, p.174.
[12] *Parliamentary Papers* (1826), xv 16.

demonstrating legal developments over a period of time.[13] However, in order to understand and interpret enrolled decrees, it is necessary to pay close attention to the specific details surrounding the suit in question. Only by unravelling these complex, multifaceted, and vehemently debated cases, can we reveal the specificities of the debt-recovery process and how bankruptcy intersects with wider issues concerning the trading community.

The chapter is divided into three sections. The first section outlines the difference between final and enrolled decrees, attempting to account for the variations in the levels of enrolment from the fifteenth century. Attention is then turned to establishing the practical implementation of equitable principles and justice, illustrating the problems that arose when attempting to apply these legal ideals to a growing case load. The second section turns to the documents themselves, discussing the finality of bankruptcy suits by placing enrolled decrees alongside the concept of appropriating blame and clarifying the degree to which parties left the process as 'winners' or 'losers' in Chancery. This section illuminates the way in which Chancery intersected with other courts and legal jurisdictions in regard to debt recovery. The final section seeks to establish what we can learn about bankruptcy in Chancery from this stage of proceeding. Particular attention is paid to the appeals process up the legal hierarchy, and the complex relationship between debt recovery, courts of equity, and the wider common law courts. Throughout these final two sections, it is important to untangle these complex suits, in order to comment on the specific and detailed aspects of the bankruptcy process outlined above.

[13] See Friedman and Niemira, 'The Concept of the "Trader" in Early Bankruptcy Law', pp.223-249.

The Implementation of Equitable Principles of Justice

While all final decrees were recorded in the entry book, until the decree was enrolled, it only had the force of an 'interlocutory order', meaning it could be altered upon a rehearing or occasionally upon a motion.[14] However, in order to contest an enrolled decree, a party had to initiate a more formal reconsideration by way of submitting a bill of review. The scope of a bill of review was limited to those who were parties to the original bill and could only be submitted to remedy an error in law, or to present newly discovered evidence.[15] The only other option was to petition the House of Lords to appeal the enrolled decree. However, as both of these processes would involve considerable time and expense, enrolment could create a substantial barrier to any attempt to reopen the cause.[16] In this sense, The National Archives' online description explains that enrolled decrees provide 'a permanent and authoritative record of final judgements of the court of Chancery'.[17] Horwitz elaborates, suggesting that enrolled decrees reinforced the court's decision, thereby gaining 'a greater degree of finality'.[18] However, there is a danger in overstating the definitive finality of decrees, enrolled or otherwise.

Certainly, an enrolled decree did provide some sense of finality in comparison to a final decree or order, but this was not as conclusive as is often believed. For example, if a bill of review failed, then it could be subject to appeal up the legal hierarchy: from the Master of the Rolls to the Lord Chancellor, and above the Lord Chancellor to the House of Lords. Furthermore, the Lord Chancellor could rehear an appeal, and as Holdsworth states, 'it thus

[14] *The Practical Register in Chancery*, pp.123-125.
[15] Holdsworth, *A History of English Law*, vol.9, p.368.
[16] Horwitz, *A Guide to Chancery Equity Records*, p.23.
[17] TNA, 'Chancery and Supreme Court of Judicature, Chancery Division: Six Clerks Office and successors: Decree Rolls' online description for C78 and C79 series, stable URL: http://discovery.nationalarchives.gov.uk/details/r/C3638, accessed 23/02/2019.
[18] Horwitz, *A Guide to Chancery Equity Records*, p.23.

appears that the impossible attempt of the court to produce a perfect decree prevented any kind of decent finality'.[19] Michael Birks has stated that from the standpoint of jurisprudence, the judgment of any court should be 'perfected immediately after the judge has pronounced his decision'. In practice, however, this ideal is not easily attainable, especially in a court of equity. Indeed, it was not until 1954 that the court clarified at what moment in time its decisions become irrevocable. In *Re Harrison*, the point at issue was whether a judge of the Chancery Division held power to alter or reverse — before the judgement had been formally entered — an oral and decisive judgment in open court. It was finally decided that a judge did have the power to recall an order before it had been perfected, which was later confirmed by the Court of Appeal.[20] This decision shows that throughout the history of the court, the exact moment whereby a case was concluded was not clearly defined.

The degree to which decrees were enrolled varied dramatically throughout the early modern period. For most of the Elizabethan period, final decrees were not automatically enrolled, and Jones has shown how in the second half of Elizabeth's reign, enrolment showed signs of falling into disuse. However, it was during this period that there was the beginning of the notion that in order for decrees to be effective, they had to be written down in one form or another. In this sense, Jones believes that litigants became reluctant to enrol decrees, as adequate records were already being kept by the register in the entry books. As such, it was becoming apparent that enrolment was an unnecessary expense.[21] In relation to the point of finality outlined above, this led to a degree of legal ambiguity, as it was always possible for decrees, enrolled or otherwise, to envisage the possibility of further proceedings at law. This has led Jones to conclude that the Elizabethan period was one of uncertainty: 'Entries of

[19] Holdsworth, *A History of English Law*, vol.9, p.369.
[20] Michael Birks, 'The Perfecting of Orders in Chancery', *Cambridge Law Journal*, vol.13, no.1 (1955), pp.101-112, p.101.
[21] Jones, *The Elizabethan Court of Chancery*, pp.296-297.

decrees jostle with those of final decrees, some were enrolled, and many were not'. In 1597, and in an attempt to clarify such ambiguity, Lord Chancellor Egerton ordered that a decree was not binding unless it was drawn up and enrolled, which was to set the precedent for the formality and finality of decrees throughout the seventeenth century.[22]

By the late seventeenth century, it began to be common to speak of enrolled decrees as being of a similar authority to a judgement in the common law courts. Indeed, Nottingham placed an emphasis on giving decrees in equity the same force as judgements at law, a course which had involved building equitable rights upon common law rights.[23] However, Nottingham realised the potential for the abuse of enrolled decrees, in which they were employed as a tactical manoeuvre to discourage the opposing party from bringing an appeal. As such, Nottingham cautioned against hasty enrolments, as it may 'prejudice [the] defendants' rights to be heard and put him to a bill of review which may not always fit his case'.[24] In a suit from 1674, an order was made and the enrolment undertaken without giving the opposing side an opportunity to question the order. Nottingham set aside the enrolment as irregular, stating 'a court of conscience shall never confirm an award made against conscience'.[25] In a curious case from 1674, it was resolved that the plaintiff may have a bill of review to reverse a decree made for himself if it be less beneficial to him than in truth it ought to have been.[26] As Nottingham explained, while an enrolled decree could only be reversed or altered by a bill of review, any mistakes that are demonstrative, such as an 'error in arithmetic by miscasting, or mistaking the date, or the like', may be rectified without submitting a new bill.[27] For example, in a case from 1677, the final decree had accidently omitted two previous orders

[22] Ibid, p.299.
[23] Yale, *Lord Chancellor Nottingham's Chancery Cases*, vol.1, p.195.
[24] 'Robinson & Barton' (1675), in Ibid, vol.2, p.207.
[25] 'Burges v Skinner' (1674), in Ibid, vol.1, p.31.
[26] 'Vanderbende & Levingston' (1674), in Ibid, vol.1, p.86.
[27] Heneage Finch, *Manual of Chancery Practice,* p.129.

made by the court. As such, Nottingham ordered the decree to be enrolled *de novo* with the previous orders inserted in the enrolment.[28] While Nottingham desired enrolled decrees to be built upon, and have the same force of judgement as the common law, he was careful not to impress an excessive rigidity that would render the concepts of conscience and fairness inaccessible.

While the seventeenth-century conception of the status and importance of enrolled decrees is unquestioned, there is a dramatic decline in the number of decrees being enrolled throughout the eighteenth century. Some statistical analysis will illustrate this point. Horwitz has shown that between 1627 and 1636, the average number of enrolments was roughly 180, which had decreased to about ten per annum between 1785-1794. This dramatic fall in enrolled decrees seems to have been an eighteenth-century phenomenon, as between 1685-1694, the average number of enrolled decrees was approximately 170, out of a case load roughly comparable to the 1620s.[29] Within the date range of this thesis, the fall in the number of enrolled decrees is substantial, averaging around 184 for the five-year period of 1674-1678, before falling to just under forty three for the five years up to 1750.[30] As Birks has concluded, by the second decade of the eighteenth century, for all practical purposes, enrolment had already 'fallen into desuetude'.[31] However, when attempting to account for such an alteration, Horwitz concludes that why such a decline occurred 'is not altogether clear'.[32] What is certain, is that the court itself was discouraging enrolment from the turn of the century, despite the loss of fees for some of its officers. Practice manuals of the later eighteenth and early nineteenth century suggest that the reason for such an approach was the additional expense to the parties of

[28] 'Todd & Nicholson' (1677) in Yale, *Lord Chancellor Nottingham's Chancery Cases*, vol.2, p.588.
[29] Horwitz, *A Guide to Chancery Equity Records*, pp.27-28.
[30] Averages calculated from 'Chancery Final Decrees', AALT: University of Houston, stable URL: http://www.uh.edu/waalt/index.php/Chancery_Final_Decrees accessed 26/02/2019.
[31] Birks, 'The Perfecting of Orders in Chancery', pp.106-107.
[32] Horwitz, *A Guide to Chancery Equity Records*, pp.27-28.

altering enrolled decrees concerning financial matters.[33] Yet, as enrolled decrees decreased, re-hearings became more common, again causing further delays. Ordinarily, a decree had to be enrolled within six months of the date of the final decree, but the court did enable decrees to be enrolled after the six-month period, and as enrolment became less common, the length between the date of the final decree and the enrolment lengthened. In this manner, it is also relevant that after 1725, the House of Lords would refuse to accept an appeal if the enrolment had occurred more than five years previously.[34]

Turning to the broader aims of the court, we have already seen how, as a court of equity, Chancery was committed — in principle at least — to thoroughly investigate individual complaints and render appropriate relief based upon the concepts of conscience, fairness, and justice. Yale has pointed to the decline in the importance of pleas and demurrers throughout the eighteenth century to demonstrate the court's principled desire to thoroughly investigate each complaint. As pleas and demurrers were submitted with the intent to bring the suit to an abrupt termination, Yale argues that this effect 'did not altogether accord with a procedure modelled to explore all the merits of a case'.[35] Ultimately, in order to administer justice in a fair and equitable manner, it was understood that the court needed to have a firm understanding of the specific details of each individual case. As the court sought to investigate and understand the individual merits and specific details of a suit, so too must we unravel these complexities in order to understand their relevance.

[33] For a detailed discussion see Ibid, pp.23-24.
[34] Ibid, p.23, n.43, p.85.
[35] Heneage Finch, *Manual of Chancery Practice,* pp.56-57.

The Finality of Bankruptcy Suits

This section seeks to demonstrate a lack of finality in bankruptcy suits, by placing enrolled decrees alongside the concept of appropriating blame and clarifying the degree to which parties left the process as 'winners' or 'losers' in Chancery. While it is difficult to compute the exact length of suits within my sample — as often the enrolled decree did not specify the date of the first bill — a crude estimation shows that the average duration of these suits was over 4 years, with the shortest being concluded within a year and the longest lasting over twelve years.[36] This aligns with the level of litigation, and the duration of suits outlined in the introduction, as while the number of bills submitted to the court began to decline during this period, the time that it took for the court to conclude a suit dramatically increased.[37] This meant that the court continued to be overburdened in its application of equitable principles of justice. Of the forty-three suits, sixteen enrolled decrees referred specific matters to a Master to report back on, two of which also declared that the case needed to be tried in a common law court to rule on a particular legal matter. Indeed, only twenty-two suits could be said to have concluded the case with any degree of finality, while the remaining five have been categorised as falling somewhere in between these two distinctions, and a summary of these different outcomes are discussed in greater detail below.

Broadly speaking, a plaintiff's bill may have been upheld, or it may have been dismissed, and there are obvious examples of both within my sample. In a bill submitted in Easter term 1697, but not concluded until 21 November 1709, the sole plaintiff Charles Booth took aim at the entirety of the bankruptcy process. Booth named the three commissioners, two assignees, the bankrupt James Boswell, and finally a debtor of the bankrupt, William Awbury, as the

[36] The date of the decree is the date upon which the suit was heard and concluded in open court, not the date upon which it was enrolled upon parchment.
[37] Horwitz and Polden, 'Continuity or Change in the Court of Chancery', p.53.

defendants in the suit. In his bill, Booth claimed that there were several dealings between Awbury and the bankrupt, and after coming to an account on 26 November 1696, Awbury assigned a note to the bankrupt for an outstanding debt of £65. Furthermore, on 2 December 1696, the bankrupt applied to Booth for a cash loan of £200, and as a part-security for the debt, assigned the note over to Booth, as well as 'nine Watches a small box of rings and diamond Case box' worth an additional £50. Shortly after this transaction, Boswell absconded, and a commission of bankruptcy was taken out on 27 February 1697. However, the crux of the case centred around Booth's attempts to redeem the original note in order to satisfy the £200 debt due to him from the bankrupt. Ultimately, Awbury claimed that there was previously a £40 discount that needed to be deducted from the £65 note, and as the rest of the defendants were involved in the ongoing commission of bankruptcy, they refused to redeem the entirety of the note, preferring instead to pay the creditors a fair and proportional dividend from the bankrupt's estate. When the cause came to be heard in open court, no counsel appeared for the defendants, 'though they were duely served with subpenas to heare judgement'.[38]

It was ordered that Awbury should pay the plaintiff the full £65 plus interest, as well as his costs for the suit in Chancery, which were to be calculated by a Master. It was further ordered that the assignees should pay out of the bankrupt's estate the remainder of the £200, together with interest. In default of such a payment, the plaintiff was 'to keep and enjoy the Watches Rings and other things' previously mentioned. Finally, the defendants were also to pay the complainant for their 'default of Attendance', which meant they were fined for not appearing to have the suit heard, which presumably would not have helped their case.[39] This is a

[38] This was the common procedure, whereby after a ruling a Master would calculate the costs to be paid by specified parties, as well as any interest due on paper instruments. Throughout this chapter, unless otherwise stated, costs and interest would be calculated by a Master after the final judgement.
[39] AALT, C78/1719, no. 12 [135], 'Booth v Awbury' (1709).

relatively rare example of the plaintiff securing an absolute victory. Not only did Booth redeem the full amount due on the note, but he was able to secure repayment from the bankrupt's estate for the remainder of the outstanding debt. The final decree also included any interest due, as well as the entirety of the costs of proceeding in Chancery. Ultimately, this suit further demonstrates that the defendants suffered an outright loss. In this manner, the order to pay the opposing side's costs can, to a certain extent, be seen as the court appropriating blame, and seeking to render appropriate equitable relief. However, what is clear in this suit is the level of complexity over the details of the case. While this example could have simply been utilised to demonstrate an outright victory and loss, it is only through the understanding and analysis of the complexities surrounding the bankruptcy process, and in particular the details around the note, which inform us of how Chancery came to final decisions.

In contrast, there are clear examples whereby the plaintiff's suit had been dismissed outright. In a fairly straightforward case decided on 9 May 1693, the plaintiffs were creditors of a deceased bankrupt named Edward Larkin. They submitted their bill in Trinity term 1690 — after a commission of bankruptcy had been taken out some three to four months previously — and claimed that the bankrupt was indebted to several individuals for over £600. Furthermore, the plaintiffs claimed that a defendant named Nicholas Crisp was indebted to the bankrupt for £400, and that during his lifetime, Larkin held a 60-acre estate in Kent. Put simply, the plaintiffs were claiming a legal right to the estate, as well as the £400 due from Crisp, in order to satisfy their outstanding debts. On the opposing side, the three named defendants — including the bankrupt's widow — suggested that the plaintiffs held no right to the estate or any debt due from Crisp, as it should be the legal property of his executors. Ultimately, the Lord Chancellor dismissed the bill without costs, demonstrating that the plaintiffs held no equitable right to the estate, or the subsequent debt due to the bankrupt's

executors.[40] Similarly, in a complex case whereby the assignees of John Hinde — a bankrupt and co-partner of Thomas Kirwood, both goldsmiths — sought to recover over £17,000 owing to the partners from several defendants, the court 'Declared that their was noe Cause to give the Complainants any Releife on their said bill'. As such, the bill stood 'absolutely dismissed out of this Court but without cost but if the Complainants shall not Acquiesse in the said Order but shall give the Defendants any further trouble touching the matters in question then the Complainants are to pay the Defendants their costs'.[41] While the specific details about the rationale and reasoning behind these decisions are sparse, these examples clearly demonstrate that, on occasion, a suit could be categorically won or lost, with the decision being finalised on one side or the other. However, the order to pay costs can be seen as an attempt to appropriate blame to the losing party, as it demonstrated that in a court of equity, the plaintiff's bill, or defendant's answer, were seen to be in opposition to equitable principles of justice. In contrast, if no costs were assigned, then this simply meant that there was no basis to apply equitable relief to that party. As we see in the second example, while there was no right to any redress in Chancery, if the complainants continued to give the defendants 'any further trouble', then blame would be appropriated in the form of paying their costs at law.

While these examples clearly demonstrate an outright winner in a suit, it was far more common for this not to be the case, and bankruptcy cases remained multifaceted, even in the decision-making process of the court. In order to demonstrate the complexities of the possible outcomes of a Chancery suit, it is necessary to work through a particular case in detail, whereby multiple claims were made on several notes. In *Cole v Mackrill* (1737), the bill of complaint was submitted in Trinity term 1733 and the cause was decided on 24 January 1738.

[40] AALT, C78/2061, no.12 [51], 'Dunmall v Crispe' (1693).
[41] AALT, C78/957, no.3 [33], 'Browne v Hind' (1694).

The plaintiffs in the suit — Christian Cole and William Wilkinson — were two assignees of John Thomson, who was described as a 'warehouse keeper to the Charitable Corporation for Relief of Industrious Poor'.[42] The plaintiffs claimed that Thomson committed an act of bankruptcy on 12 October 1731, and a commission was executed six days later, on 18 October. As well as the bankrupt, the suit named 4 other defendants: Thomas Mackrill, Giles Biggott, Claude Johnson, and Thomas Barnes. The bill stated that Thomson was entitled to a mortgage of the estate of William Cordwell in the County of Kent, as an indenture had been made 'on or about the Sixth day of October' 1731. Once the property was in his possession, Thomson assigned over the mortgage to the defendant Mackrill in consideration of the sum of £2485 12s. 6d. Only £1000 was paid up front by Mackrill, who provided three promissory notes for the outstanding balance, all of which were dated 6 October 1731. The notes were specified for the following amounts and due dates: £500 three months after 6 October 1731, £500 after six months, and £485 12s. 6d. after nine months. As the indenture, as well as the three notes, were executed six days prior to any act of bankruptcy being committed, then they were seen to have been executed for a valuable consideration. The assignees were claiming a full right to the notes, as Mackrill had refused to come to an account with the ongoing commission in order to satisfy the debt. Further to this account, two defendants, Giles Biggot and Claude Johnson, claimed that two of the notes had been assigned to them, again for a valuable consideration. In contrast, the plaintiffs claimed that if any such assignment did occur, then they were fraudulently enacted, occurring *after* the bankruptcy of Thompson.[43]

[42] While this appears to be the same John Thomson who worked for the Charitable Corporation and was discussed in the first chapter within the suit 'Charitable Corporation v Chase' (1735), this enrolled decree does not relate to the same case, as William Wilkinson was named as a plaintiff in this case and a defendant in the previous. Similarly, there is no mention of Christian Cole in the previous case, and as is explained below, this case was revived by a bill in 1736.

[43] AALT, C78/1797, no.4 [4], 'Cole v Mackrill' (1737). This suit was actually heard in 1738, according to the Gregorian calendar.

As well as the multiple claims to the promissory notes, the decree also explained that there had previously been an action brought by Biggot in a common law suit against Mackrill. According to Mackrill, 'the said Biggot produced such Evidence to prove the Indorsement by the said John Thomson the Bankrupt before any Act of Bankruptcy'. This led to the jury finding a verdict against Mackrill for the note, specifying a payment of £485 12s. 6d. as it had in fact been honestly made for a valuable consideration. In his answer, Biggot said he was 'a Stranger' to any transactions made between the bankrupt and Cordwell, but 'had heard' that about 7 October 1731, Mackrill gave a note to the bankrupt, who subsequently endorsed it, before finally producing it to Biggot on 11 October 1731. It was on this date that Biggot discounted £22 18s. from the note, and 'Denyed that at the time of discounting the said note he knew or was informed of the Bankruptcy of the said Thomson and believed he publickly appeared in Business some days after the said Transactions'. When Biggot applied to Mackrill, he refused payment, so Biggot was forced to bring an action against Mackrill and obtained a verdict in common law for payment of his debt and costs at law. Similarly, Claude Johnson suggested that on 29 December 1731, he received a note that was again dated 7 October, signed by Thomas Mackrill, and endorsed by the bankrupt. Yet, both Mackrill and the bankrupt had refused to satisfy the note. As such, the two defendants denied that the assignees held any legal right to the two notes, as they were made honestly at a time when Thomson was not a bankrupt. Finally, the bankrupt answered and gave an account that was similar to the plaintiffs, as William Cordwell executed a mortgage of an estate in Kent to him for securing £2000 plus interest, which in October 1731 Thomson then assigned to Mackrill for the sum of £2186.[44]

[44] Ibid.

This is clearly complex, and in several instances, difficult to follow. Yet, as we look at the path that the suit took between its introduction in Chancery, and its eventual completion, we see a number of interesting developments. To begin with, at some point during the suit, the defendant Thomas Barnes died, and the suit was abated. When the case was eventually revived — by a bill of revivor submitted in Michaelmas term 1736 — we find that William Wilkinson remained the sole plaintiff and assignee, as Christine Cole had also died. The new bill sought to name Mary Barnes, widow of Thomas Barnes, in the place of her deceased husband, which was accepted by the court and the suit went forward. Somewhat unsurprisingly, Mary Barnes provided an answer similar to that of her husband's previous statement, as she suggested she was 'an absolute Stranger to all such Transactions and knew nothing' about the details of the case. Further to this addition, in Hilary term 1737, Samuel Grove submitted a supplementary bill in which he sought to be named sole assignee to the bankrupt's estate, as Wilkinson declared himself 'desirous to be discharged from his said Trust'. This was accepted by the court, and the cause — containing the original bill of complaint, the bill of revivor, the supplementary bill, and depositions of witnesses — came to be heard by Sir Joseph Jekyll, Master of the Rolls. As such, we see the court meticulously work its way through all these specific, complex, and interesting details before attempting to come to a fair and equitable decision. As the court felt these details were pertinent to such a process, it is imperative that we have a firm understanding of the complexities.

Turning to the decision of the court, we see the multifaceted nature of the final judgement. It was ordered that the bill stood absolutely dismissed against Mary Barnes, with her costs to be paid by the plaintiff. Similarly, the suit was dismissed against the defendant Claude Johnson, although he was ordered to pay forty shillings towards the cost of the suit. It was further ordered that the bankrupt Thomson, was to 'Deliver the said note admitted to be in his hands to the said Complainant in the Same Condition as the said note was delivered to him'. This

meant that the plaintiff, as assignee of the bankrupt, was to redeem one of the notes that was initially given to the bankrupt by Thomas Mackrill. It was referred to a Master to see exactly what amount of principal money and interest was due on the note, and the plaintiff was to pay the cost of this suit 'relating thereto'. It was further ordered that the complainant and the defendant Biggot were to proceed to a trial in the court of King's Bench, upon the following issues: firstly, to determine when the money on the note claimed by Biggot was paid to the bankrupt, and secondly, to establish whether Thomson was a bankrupt on or before the time of such payment. As we have seen throughout the thesis, and is clearly illustrated in this suit, the exact timing of bankruptcy was an identifiable matter of fact and would determine what debts could be legally claimed by the assignee. The decree concluded by stating that the 'Consideration of all further directions is hereby reserved until after the said Tryal is had when either party is to be at Liberty to resort back to the Court as they shall be advised'.[45] There are no further details regarding the trial in the decree. It could be possible that the trial never took place, or if it did take place, the parties never returned to Chancery. What is certain, is that the decree was formally enrolled, and no further details of this common law case survive in this source. However, what we see in this decree is that it is difficult, if not impossible, to establish a clearly defined winning and losing party. The complainant's bill was dismissed against some defendants, and was upheld against others, while costs were assigned on an individual basis. As such, it is completely inappropriate to attach notions of blame upon such an entangled and interconnected conclusion, as the court attempted to arbitrate, and meticulously work through, each individual claim.

Perhaps the most striking examples of the complex and multifaceted nature of decrees can be seen in cases where a Master had included his report on complex financial issues and matters

[45] Ibid.

of account. These examples clearly demonstrate how the types of cases differ in content compared to Muldrew's analysis of local credit networks, as the authority and expertise of the court was required to clarify the specific details of indebtedness. Again, it is necessary to work through one case in detail. Decided on 1 August 1718, the sole plaintiff was a merchant named Thomas Willis from London, who was also the sole assignee of Henry Heginbotham junior. Only two defendants were named in the suit, the bankrupt and his father, also Henry Heginbotham. The bankrupt absconded and committed an act of bankruptcy in June 1712 and the bill of complaint was submitted in Hilary term the following year. The bill claimed that as part of a marriage portion, Heginbotham senior was expected to receive £400, and that from certain properties that he held in Lancashire and Cheshire, he was to pay his son an annuity of £20 per annum. However, this annuity had not been paid for the past 9 years. The plaintiffs further stated that the father owed £720 to several individuals, for which he made his son liable upon several bonds, who 'sometime after with his own money' paid a number of these original creditors in discharge of the aforementioned bonds. As such, the father had 'prevailed' on the rest of the creditors to prove their bonds before the commission of bankruptcy, so that the bankrupt's estate would satisfy his own, personal debt. Ultimately, the plaintiffs claimed that the father was in fact indebted to his son, and any bonds were 'obtained by fraud and Surprize and the bankrupt being under the influence of the Father', executed the bonds without knowing their content.[46]

In their separate answers, the father claimed he was a creditor to his son and wished to enter the bankruptcy process as such, while the bankrupt claimed to be a creditor to his father. As such, it is unsurprising that the Lord Chancellor referred the matter to a Master to take an account of who stood as a creditor, and who as a debtor, in this scenario. It was ordered that

[46] AALT, C78/1396, no.4 [99], 'Willis v Heginbotham' (1718).

the father was to be examined under interrogatories and ‘come to an Account’ before the Master, for any of his son’s estate which had ‘come to his hands or to the hands of any other person for his use’. It was further ordered that the Master should look into the father’s answer and ‘examine and Certifye whether the Defendant Heginbotham Senior was bound therein for the proper debt of the Defendant Heginbotham Junior or on what account’. Furthermore, the Master was to ‘examine and Certifye what Bonds the Defendant Heginbotham Senior and Junior were Jointly bound in att the time of the Defendant Heginbotham Juniors marriage’. If anything should ‘appeare Doubtfull’ to the Master, he was to ‘Report the same Specially to the Court’. The Master submitted his detailed report on 7 May 1718, which was included in the enrolled decree, and the specific details and a summary of which follows. The father had £18 9s. of the bankrupt’s goods in his possession and also owed the bankrupt for 13 years of arrears of annuity, at the rate of £20 per annum, occurring from 24 January 1704 to 24 January 1717, which totalled £278 9s. 2d. However, the father had ‘paid taxes for the Estate out of which the said Annuity doth Issue’ at the rate of two shillings in the pound, which amounted to £26. With the taxes being deducted, the father owed a total of £252 9s. 2d. to the bankrupt. Furthermore, the father did also ‘serve and Assist’ the bankrupt in trade for four years, from 24 January 1704 to 24 January 1708, for which the Master allowed the rate of £40 per annum. This meant that £160 was deducted from the original £252 9s. 2d., leaving £92 9s. 2d. due to the bankrupt. Finally, the father ‘did lay out and pay for the use’ of his son, £22 11s. 10d., which left a total of £69 17s. 4d. to be paid to the bankrupt from his father.

On the other side, the Master found that on 17 November 1704, the bankrupt borrowed £300 on bond, which was still due. The Master thought this ‘fit to Allow’ and computed interest for this amount until 17 March 1712 — which was the time when the bankrupt first failed — being eight years and four months at six pounds per cent, which amounted to £150. This made a total of £450 to be deducted from the £69 17s. 4d. owing from the father, which

meant that a final total of £380 2s. 8d. was due from the bankrupt son to the father. Finally, the Master found that the two defendants were jointly bound in numerous bonds to several people from the time of the son's marriage. As such, the Lord Chancellor ordered that the Master's report stand ratified, and that the father was to enter the commission of bankruptcy as a creditor, while the plaintiff was to pay the father's fees and costs in Chancery.[47] In this instance, it appears that the assignees miscalculated the bankrupt's credit and debts, as the father was actually a creditor to the bankrupt, rather than a debtor. In this suit, we not only see the multifaceted nature of the final judgement of the court, but we again see the interconnected nature of credit networks being played out in Chancery. We see a complex series of indebtedness within a family network, as the originally autonomous commission of bankruptcy comes to Chancery for aid and assistance. In this manner, it is clear that such credit networks had already been formed, and were so complicated in their very existence, that they required the expertise and formal authority of the court to untangle them, clearly establishing the roles of creditors and debtors, as well as the specific amounts due.

Enrolled Decrees as a Stage of Proceeding

In analysing enrolled decrees in isolation, it is important to identify what aspects of the bankruptcy process can be revealed at this stage of proceeding. A productive way of achieving this, is to determine whether there are any details of bankruptcy in Chancery that cannot be garnered from other stages of proceeding. In this manner, the one aspect that is clearly identifiable in enrolled decrees, is that of the appeals process. From the forty-three enrolled decrees in this sample, eleven had been appealed in one form or another. Of these

[47] Ibid.

appeals, eight were entirely unsuccessful, two were successful, and one had elements of both success and failure within it. As such, this section analyses these decrees in detail, as they reveal aspects of the bankruptcy process which are unique to this stage of proceeding.

To begin with, a number of appeals were dismissed outright in a fairly prompt manner. For example, in a suit decided in 1703, a defendant named Mary Ashfield refused to satisfy a mortgage of her late husband, as she claimed the repayment contained 'very unconscionable Interest being Allowed upon Interest many times over to make upp the said two thousand three hundred and thirty five pounds'. Ultimately, Ashfield hoped to prove that the demanded repayment was 'Interest and Interest upon Interest', and claimed that she 'should not pay more for the Redemption thereof then the principall sumes originally lent and the simple Interest'.[48] However, the Lord Chancellor ordered that the Master's report — which stated that the amount due was actually far higher, standing at £3214 9s. 9d. — should stand ratified, unless the defendants appealed within eight days. Within this period, Mary and her new husband, Anthony Ashfield, submitted their appeal to the court in order to have the cause reheard. While the defendants' counsel offered 'diverse reasons for Discharge of the said Order', they ultimately failed to pay the necessary £10 costs to have the cause reopened. As such, their appeal was dismissed outright, and the Master's report stood confirmed.[49] In a similarly straightforward suit concluded on the 30 January 1685, the Lord Chancellor originally decreed in favour of the nine defendants. However, the sole plaintiff John Loggin, filed exceptions to the order and paid the necessary costs to have the cause re-examined. In direct and unambiguous language, the court found 'noe Cause or ground of Equity to releive the Complainant', and subsequently, 'noe Cause to Alter the said former order'. The plaintiff

[48] AALT, C78/1485, no.8 [5], 'French v Ashfield' (1703).
[49] Ibid.

was ordered to pay an additional £5 in costs directly to the defendants.[50] These two suits demonstrate fairly straightforward examples whereby the appeal had initially been entered and then rejected outright. But again, there were more complex instances of appeals.

In an intricate case decided on 21 October 1745, over twenty creditors of Sir Stephen Evance submitted their bill against several administrators and assignees of Evance and his business partner, William Hales, who were also co-bankrupts in a separate commission of bankruptcy.[51] This example clearly demonstrates that the concept of appropriating blame, and declaring a winner and a loser, was inappropriate for complex bankruptcy suits, as the court acted more as an arbitrator, assessing individual financial transactions. The suit was eventually referred to a Master, to account for the size and substance of goods and estate that were in the possession of the defendants, as well as to assess the contribution money paid by creditors in the two commissions of bankruptcy. It was ordered that because of the sheer scale of the indebtedness of these two goldsmith bankers, creditors were at liberty to come forward and prove their outstanding debts to the Master. In a lengthy report — which was summarised in the enrolled decree — Master Bennett meticulously specified the exact debts due, the contribution monies paid by creditors, and the outstanding costs to each individual defendant for the multiple suits executed in Chancery. However, before the report could be ratified, there were 'Several Setts of Exceptions' submitted by the plaintiffs, other creditors of the bankrupts, and four defendants. While the exact details of these exceptions, and the conclusions made, are too numerous to effectively work through in detail, a few examples can grant a general picture. The defendants claimed that in the first schedule of account, the

[50] AALT, C78/916, no.1 [80], 'Whitaker v Loggin' (1691).
[51] Sir Stephen Evance appears frequently in discussions of eighteenth-century finance, see Neal, *'I Am Not Master of Events'*; Jessica Richard, *The Romance of Gambling in the Eighteenth-Century British Novel* (London: Palgrave Macmillan, 2011); Stephen Quinn, 'Gold, Silver, and the Glorious Revolution: Arbitrage Between Bills of Exchange and Bullion', *Economic History Review*, vol.49, no.3 (1996), pp.473-490; Henry Lancaster, 'Evance, Sir Stephen' (1654/5–1712), *ODNB*.

Master had reported that £350 was due to Edward Woodcock on bond, as he was an assignee of Thomas Coleborn in an unrelated commission of bankruptcy. The exception was made that in fact only £337 2s. 7d. was due. Similarly, Sarah Clough was reported to be due £200 on bond, whereas the defendants claimed that there was only £181 14s. 1d. due from Evance's estate. Ultimately, on complex financial issues such as these, some exceptions were allowed, some overruled, and some compromised. Interestingly, the estate was so large that the costs of this suit were to be paid out of the estate of Evance.[52] While this clearly demonstrates that Evance's estate was large enough to cover the expenses of this particular suit, it again shows that the concept of appropriating blame for such financial losses was not appropriate in Chancery. Within this decree, it is the appeals process that has enabled us an insight into the aim and decision-making procedure of the court. Ultimately, such an aim can be seen in the court trying to render an equitable remedy that suited the majority of the creditors of the bankrupt; compromising, rejecting, or accepting exceptions to the Master's appraisal of specific outstanding debts.

One appeal is worth analysing in detail, as it was successfully taken to the pinnacle of the legal hierarchy, whereby the House of Lords overturned a previous decision made by the Lord Chancellor. This complex case — that involved several suits in multiple jurisdictions — is explained throughout an extremely lengthy enrolled decree, but a brief summary can be given as follows. In a bill submitted in Trinity term 1732, the two plaintiffs were assignees of John Ward, who had debts exceeding £60,000 owing to multiple creditors. The plaintiffs claimed that Ward held several lands and establishments in Essex which far exceeded his debts, but had fraudulently concealed his estate by assigning it to the ten defendants. As such, the plaintiffs desired the defendants to individually come to an account for any of the estate

[52] AALT, C78/1814, no.12 [24], 'Bromley v Child' (1745).

of the bankrupt that remained in their possession. After several pleas and answers were presented to the court — whereby a common defence was that Ward had not committed an act of bankruptcy, or was not a 'trader' under the wording of the statutes — the suit came to be heard in Chancery on 4 December 1736. At this juncture, the Lord Chancellor dismissed the plaintiff's bill without prejudice, meaning they were free to resubmit a new bill if they pleased. However, being 'Dissatisffyed' with the decree, the plaintiffs submitted their appeal to the House of Lords. The appeal was heard in the Lords on the 22 and 23 February 1737, and having referred to a particular point of law — which was unspecified in the decree — it was unanimously decided that the decree of dismissal be reversed, and the suit was to be reheard on the merits of the case. On 30 and 31 October 1738, the cause came to be reheard before the Lord Chancellor, with the bill and subsequent answers remaining the same in content as before.[53]

The Lord Chancellor ordered that the parties were to proceed to a trial in the court of King's Bench, to answer the sole question as to the exact date of John Ward's bankruptcy. The jury established that Ward became a bankrupt on 26 August 1725, which was over five years before the commission of bankruptcy was taken out on 20 November 1730. Seemingly concerned with such a distance between the two events, the Lord Chancellor sought to clarify from the common law judges who oversaw the case, 'on what Act of Bankruptcy the said Verdict was founded'. In his final decree of 14 December 1739, the Lord Chancellor declared that 'it appeared to him by the information of the Judges of the Court of Kings Bench before whom the said issue was tried … That no Evidence was given on the said Tryall of any Act of Bankruptcy committed by the said John Ward on or before the twenty sixth day of August

[53] No online version of this decision is available on the House of Lords website, stable URL: http://www.bailii.org/uk/cases/UKHL/ accessed 4/3/2020. It is possible that a manuscript version has survived at Parliamentary Archives: GB-061 Catalogue Reference: HL/PO/LB/1/10 (1702-1835), which would lie outside of the scope of this thesis.

One thousand Seven hundred and twenty Five besides the making and Executing of the said Indentures'. These indentures were dated the 25 and 26 August 1725, and were the 'Ground on which the Jury Founded their Verdict'. The Lord Chancellor accepted the date given by the common law verdict and declared that all indentures and deeds mentioned in the Chancery suits were executed *after* the first act of bankruptcy on the 26 August 1725. As such, they were 'Executed by the said John Ward without any real and Valuable Consideration and were deceitfully contrived with intent to defraud the just Creditors of the said John Ward'. Ultimately, the specified indentures and deeds, as well as any of the estate of the bankrupt in the possession of the defendants, were to be handed over to the plaintiffs as assignees of the bankrupt. One final point to note, is that Knox Ward, the son of the bankrupt and a defendant, was ordered to pay the plaintiffs' costs, both in Chancery and for the trial in King's Bench. Ultimately, such was the duration and complexity of this suit that all parties were 'at Liberty to apply to the Court from time to time as Occasion shall require' in order to conclude the repayments.[54]

This case is striking for a number of reasons. Firstly, we get to see the complexities and the multiple jurisdictions that a bankruptcy suit could take, involving Chancery and the King's Bench, as well as an appeal to the House of Lords. Secondly, this particular suit seems to have taken a remarkably long time to reach a conclusion, as the first act of bankruptcy was committed in 1725, but the suit was not finalised until 1739. Parties were still permitted to prove their debts before a Chancery Master as the suit was ongoing, and even when a final decree had been ordered — and subsequently enrolled — the court still acknowledged the complexities of the bankruptcy process, enabling individuals to return to the court for aid in gathering and reclaiming their debts. Furthermore, this suit is a rare example of a successful

[54] AALT, C78/2067, no.1 [67], 'DeGols v Ward' (1739).

appeal occurring outside of Chancery. While initially the suit was decided in the absolute favour of the defendants, after the House of Lords reversed the dismissal and reopened the case, the cause was eventually decided on the side of the plaintiffs, with a sole defendant being charged the entirety of the costs in Chancery and the common law. Finally, we have already seen how crucial the exact timing of bankruptcy was to the debt-recovery process. In this example, the jury established a far earlier chronology of failure, which meant that any action taken by the bankrupt after this date — i.e. an execution of a deed, indenture or mortgage — was seen to be fraudulent. Ultimately, the combination of these specific and interesting details can only be gathered and fully understood at this final stage of proceeding.

In another complicated case, we can see the degree to which a decree could be appealed, as any aspect of the final judgement could be contested. This suit was decided on 13 February 1713 and the two plaintiffs, William Riley and William Applebee, were assignees of Elizabeth Dye, who owned a coffee house and a stagecoach in Oxford. Alongside the two assignees was a third plaintiff named Mary Hartwell, who was a widow and executrix of Elizabeth Dye's brother, Richard Hartwell. In November 1702, Dye asked her brother to be her coachman, paying a wage of five shillings per week — on top of his room and board — to run journeys between Oxford and London. The plaintiffs claimed that Hartwell worked for his sister for the space of six years, but 'never received any wages', instead being content 'to let them rest in the hands of his said sister hopeing it might be a kindnesse to her in her way of trade not doubting but she had been in good Circumstances and would have paid him when requested'. It was further suggested that Hartwell lent his sister the sum of £10, sold her a 'fatt hogg' worth £2 12s. 9½d., and 'kept A child' of Dye's for above six years, for which he was owed £8 per annum. Being owed more than £150, and being indebted in the sum of £100, Hartwell demanded satisfaction from his sister on 16 December 1708. In lieu of cash, Dye provided some household goods, horses, and her stagecoach to Hartwell, who

subsequently agreed to sell the goods to the two named defendants, John Stonell and Richard Wise for £178. However, Hartwell died leaving his wife Mary as sole executor of his estate, and never received any payment for the goods, which remained in the defendants' possession.[55]

What is interesting in this suit is the way in which the defendants were accused of manipulating the bankruptcy process, and taking advantage of Richard Hartwell's death, in order to avoid paying their debts. The plaintiffs' bill concluded by suggesting that the defendants achieved this by playing one side off against the other. Ultimately, they refused to pay Mary Hartwell by claiming she had no right to the debt, as Elizabeth Dye was 'a Bankrupt and Absconded before the making the said Deed of Bargaine and Sale'. If this were the case, then the goods in their possession would be liable to a future commission of bankruptcy. In response to the accusation that Dye had committed an act of bankruptcy, Mary Hartwell took it upon herself to execute a commission, so that she could prove herself a creditor and satisfy the debt due to her. The commission subsequently found Dye a bankrupt, accepted contribution money from several creditors, assigned the two plaintiffs as assignees, and granted Dye a certificate of conformity, discharging her from future liability. However, when the assignees sought repayment from the defendants, they pretended that Dye was not a bankrupt, and claimed that the goods belonged to Richard Hartwell's executrix Mary, 'And soe put it off from One to Another and paid noe body'. Growing increasingly frustrated, the plaintiffs initiated a suit in the common law courts. However, being restrained by the technical rigidity of procedure, Elizabeth Dye was not permitted to be a witness, and so the bankruptcy could not be proven. Therefore, the plaintiffs sought redress through Chancery.[56]

[55] AALT, C79/80, no.[36], 'Riley v Stonell' (1713).
[56] Ibid.

In their answer, the defendants claimed that they were unaware that the plaintiffs were either assignees, or the executor of Richard Hartwell, and suggested that the most Hartwell was owed from Dye was £10. On 2 December 1712 the cause came to be heard, and the court ordered that the parties should proceed to a trial at law in the next assize at Oxford. The central issue to be decided was to establish if, and when, Elizabeth Dye became a bankrupt. After such a trial, 'either party was at liberty to report backe to the Court whereupon such further Order should be made as should be Just'. However, the defendants were dissatisfied with the decree and appealed, desiring the cause to be heard in Chancery, rather than at common law. Upon a rehearing, the Lord Chancellor saw 'noe Cause to give the Complainants any reliefe in equity' and dismissed the bill. It was further ordered that the plaintiffs were to pay the entirety of the costs for the suit, and that the £10 deposited by the defendants for their appeal was to be returned to them.[57] This suit demonstrates that any part of a decree could be appealed. In this instance, the defendants were not appealing a final judgement of the court, but rather seeking to prevent the cause returning to the common law courts, preferring instead a hearing in Chancery. From this appeal process, we gain an insight into a specific complexity of bankruptcy procedure, as it was possible to play one side off against another and manipulate the situation so as not to satisfy outstanding debts. While the defendants were unsuccessful in their appeal, we see their arguments presented in a plausible manner, which is especially the case as it was the court who were summarising the pertinent details, and arguments of both sides.

In a similar suit, the three plaintiffs were the assignees of Robert Williamson, and named the bankrupt himself and four others as defendants. Simply put, the plaintiffs were claiming a legal right to an estate which had been mortgaged between two defendants, Robert and Faith

[57] Ibid.

Clarkson on the one hand, and John Rayner on the other. The enrolled decree summarised that a previous order had been made for this specific detail to be tried at the assize in Nottingham, whereby the plaintiffs were to proceed in an action against Robert and Faith Clarkson. Ultimately, the central question to be asked of the jury, was whether the disputed property was assigned between the two defendants for a valuable consideration, or was enacted fraudulently to prevent the assignees gaining access to the estate. The plaintiffs were unhappy with this previous order and paid £5 to have the cause reheard in Chancery. Their appeal was rejected and at a trial in Nottingham the jury gave a verdict for the defendants. However, the plaintiffs were again dissatisfied with the verdict, and moved for a new common law trial in another county, paying a further deposit of £10. It was ordered by the Lord Chancellor that the issue should be referred to the original judge who oversaw the common law trial in Nottingham, to see if it was possible to have the suit reheard. The judge certified that the case was fit to be tried again, and the Lord Chancellor agreed to have the cause reheard at the next assize, either in Nottingham or Suffolk. The complainants chose Suffolk for their new trial and had their £10 deposit returned, but were ordered to pay the defendants their costs for the initial trial. In this second common law trial, the jury again found for the defendants. Upon returning to Chancery, the solicitor for the defendants asked for the remaining purchase money of £2050, plus interest, to be paid to the Clarksons from the other defendant, Rayner. On the opposing side, the solicitor for the plaintiffs again asked for a new trial, which somewhat unsurprisingly was denied.

In an attempt to conclude the situation, the Lord Chancellor referred the matter to a Master to determine what was due to the Clarksons in principal and interest. The Master found that £2815 16s. 6d. was due from the defendant Rayner to the Clarksons, and the Lord Chancellor ordered that the report should stand ratified, and once the outstanding balance was paid, the

estate was to be assigned over to Rayner from the Clarksons in its entirety.[58] In this example, we again see that such a suit could be tried in multiple jurisdictions on numerous occasions. It is also clear that the plaintiffs submitted three separate appeals in this suit, only one of which was successful. However, what this case clearly demonstrates, is that not only are concepts such as a winning party and a losing party unhelpful, but actually attempting to define the parties themselves can be problematic. In this case, the plaintiffs were seeking to claim a legal right to an estate, which itself was subject to a mortgage between two opposing parties. As such, this case was not so much a straightforward example of plaintiffs suing defendants, but rather, the plaintiffs seeking access to the estate in question, which was ultimately denied. In this example, it could be explained in terms of the defendants actually winning the right to the debt, over an external claim on the property.

Conclusion

When analysing this stage of proceeding, it is important not to assume that decrees provide a form of narrative closure to Chancery suits. This is particularly the case in bankruptcy suits, whereby the identification, collection, and redistribution of a bankrupt's assets was often ongoing. In this manner, modern conceptions such as one single party suing another — *A* vs *B* — are unhelpful, and we need to remove ourselves from such preconceived ideas when approaching enrolled decrees. Indeed, we have seen throughout this chapter that the parties within a suit, whether plaintiffs or defendants, were not a homogenous group. Often, such parties contained both creditors and debtors, and there were competing claims on either a sole or multiple estates. As such, while there was obviously a spectrum of success and failure

[58] AALT, C78/1653, no.5 [34], 'Jeffreys v Clarkson' (1704).

throughout Chancery, the concept of a 'winning' or 'losing' party cannot be clarified and quantified to any meaningful degree. It has been clearly demonstrated that in the vast majority of cases, it is difficult, and in many instances incorrect, to attempt to assign such labels onto parties, as well as individuals with a suit. This analysis can be taken a step further by assessing the concept of blame, as while the appropriation of costs to the unsuccessful party can give an indication of wrongdoing, often such parties were simply unable to prove that they held a right to equitable relief within the jurisdiction of Chancery.

While Horwitz has shown how the broader aim of Chancery was to uncover and understand the fundamental complaints brought before the court, in order to render an appropriate equitable judgement, this chapter has applied this principle to bankruptcy suits.[59] With an increasing case load, the court was placed in a difficult position, as the practical limitations of time, expense, and a lack of judicial staff, led to increased delays and complaints about inefficiency and a lack of finality in the decision-making process. As such, the court acted as an arbitrator, assessing each individual claim and attempting to render a fair and equitable judgement for financial transactions. Ultimately, it was the court's oral narrative that was transcribed verbatim, and it is important to keep this process in mind when we attempt to unravel the complex cases that came before a judge. Undertaking this task reveals specific aspects of the bankruptcy process which are not obvious, or attainable, at other stages of proceeding in Chancery. The most prominent of these can be seen in the appeals process. In this manner, we see that the credit networks within these suits had already been formed, and were so complicated in their very existence, that it required the expertise and formal authority of the court to untangle such webs. Ultimately, while we might expect legal proceedings to be

[59] Horwitz, *A Guide to Chancery Equity Records*, pp.9-10.

straightforward, or at least concluded in a simple manner, this is simply not the case in bankruptcy suits that had been executed in Chancery.

Chapter Six: Hancock v Halliday (1742-1752)

Introduction

Up to this point, each chapter has paid close attention to one individual stage of proceeding, focusing on the processes by which these documents were created and utilised by the court. This chapter departs from this methodology in order to focus on one bankruptcy case — *Hancock v Halliday* (1742-1752) — following this suit from its initiation to its completion within the court. As such, the chapter seeks to establish whether undertaking such an approach — and exerting the time, effort, and expense that occurs in following a single case through to completion — enhances our understanding of bankruptcy within the court of Chancery, particularly in comparison to the methodology employed in the preceding chapters. A key theme throughout the thesis has been the extent to which scholars have treated legal cases as 'stories', and the manner in which the language of those involved in the process was selected and turned into a compelling narrative to persuade the court. This process has been highlighted at each stage of proceeding, as the construction of narrative needed to conform to specific legal requirements as the suit progressed. As explained in the introduction to the thesis, there are limitations to this approach. Scholars such as Christine Churches, Amanda Capern, Steve Hindle, and Tim Stretton have been able to incorporate supplementary material in order to highlight how sources outside of legal records highlight constructive story-telling of social conflict.[1] These limitations can be seen in this chapter, as we are only able to see how the case progressed in Chancery, and Chancery alone. However, by focusing on one case, we can illustrate the changes in language within the court in even

[1] Churches, 'Business at Law, pp.937-954; Capern, 'Rumour and Reputation in the Early Modern English Family', pp.85-114; Hindle, 'Self-Image and Public Image in the Career of a Jacobean Magistrate', pp.123-144; Stretton, 'Women, Legal Records, and the Problem of the Lawyer's Hand', pp.684-700.

greater detail, as we can follow the bankruptcy of Edward Halliday through the legal stages of proceeding, analysing the way the narrative changed across the extant documentation.

Looking back to the first chapter discussing pleadings, we have seen how a number of scholars have suggested that the legal 'narrative' or 'trope' or 'stories' presented to the court were expected to be convincing, plausible, or believable.[2] Furthermore, in order to be successful, supplicants needed to demonstrate that the opposing party had acted against conscience. In turning to depositions, the discussion of stories in historical scholarship still seems to centre on the collaborative nature of their composition and production, and whether or not we can gain access to the 'authentic voices' of deponents.[3] Similarly, the previous chapter analysed the manner in which the court summarised the pertinent legal arguments and presented a decision in a narrative form which was transcribed by a clerk. However, because of the sheer size, scale, and range of documentation left in Masters' exhibits, it is often difficult to understand how such material was utilised by parties in the debt-recovery process. As such, this chapter begins from the premise that finding supplementary documentation relating to exhibits may lead to the possibility of providing context and background to how they relate to a specific case. This holds the potential to enhance our understanding of bankruptcy in the court, far more than any other stage of proceeding. While explained in greater detail below, the twenty-nine references from the fourth chapter analysing Masters' exhibits formed the starting point for this analysis.

As explained in the introduction to the thesis, while certain scholars pay close attention to these different stages of proceeding, and the impact that legal requirements have had on the

[2] Churches, 'Business at Law', pp.937-954; Gowing, *Domestic Dangers*; Hunt, 'Wives and Marital "Rights"', pp.107-129; Capern, 'Emotions, Gender Expectations, and the Social Role of Chancery, 1550-1650', pp.187-209; Butler, 'The Law as a Weapon in Marital Disputes', pp.291-316.
[3] Davis, *Fiction in the Archives*; Bailey, 'Voices in Court', pp.392-408; Dolan, *True Relations;* Gowing, *Domestic Dangers*; Walker, 'Rereading Rape and Sexual Violence in Early Modern England', pp.378-407.

production of the documents, others simply comment in broad terms that they have utilised Chancery material, or one set of sources from the court. This chapter again highlights the necessity of paying close attention to these details, as when we follow a single case, we can see the manner in which the construction of narrative had changed and been adapted according to the stage of proceeding. Furthermore, we can track the bankruptcy of one individual as it was litigated through the different stages of the court. Christine Churches has suggested that Chancery 'allowed (and even by its form of procedure, encouraged) a much more expansive story-telling to relate how the complainant had become embroiled in the particular dilemma'.[4] This is a useful formulation for this chapter, as the procedure of the court allowed background detail to explain how an individual had come to a certain set of circumstances, and in this example, had been declared a bankrupt. In this manner, we do get a clearly established, and linear, presentation of financial failure from the act of bankruptcy committed in 1733, to the final decree of June 1752. As such, we have a stable set of historical details that we can trace throughout this nineteen-year period, paying close attention to the legal arguments presented in each individual document. While it would be an oversimplification to say that each document had its own unique narrative, it is possible to analyse alterations in the tone, style, and arguments presented in each *type* of document. This process can illuminate specific details of this particular bankruptcy, demonstrating the way in which the pertinent details of the suit had been amplified, or condensed, according to their usefulness as a legal argument. Ultimately, such an approach has significant ramifications for a discussion of the construction, and reinterpretation, of legal narratives and their utilisation by historians.

[4] Churches, 'Business at Law', p.944.

This chapter is divided into two sections. The first section explains the process that went into selecting and following one case from the sample of bankruptcy suits utilised in the fourth chapter. Particular attention is paid to the filing and cataloguing difficulties that need to be overcome to successfully complete such a task. The second section analyses *Hancock v Halliday* in detail, providing a clear chronological overview of the case, before analysing the construction of narrative throughout the extant documentation.

Methodology

There are several ways to identify a case involving bankruptcy and attempt to locate all extant material, none of which are straightforward. Each process presents unique cataloguing and procedural obstacles. Firstly, it is possible to identify an entry in one of the pleadings series on The National Archives' online catalogue and try to follow a case in chronological order through each stage of proceeding. However, this can be problematic as the vast majority of suits never made it beyond the initiation of a bill and its subsequent answer.[5] As such, it would be necessary to start with a large sample size in order to increase the chances of discovering a suit that would continue to the completion of a case, in the form of a final decree. This process would be inordinately time consuming and unlikely to yield significant successful results. In contrast, it is also possible to start at the end of a suit and work backwards from a final decree. As Horwitz explains, the intention of locating a decree is, 'either to fill in gaps in the history of the case for which the relevant documentation cannot be traced or, alternatively, to start from a *known* decree and trace the suit backwards into the

[5] This process is explained in detail in chapter one. For some statistical analysis, see Horwitz, *A Guide to Chancery Equity Records*, pp.25-26.

other classes of records'.[6] We will return to Horwitz's first claim regarding the usefulness of decrees later in the chapter, but it is important to note that since Horwitz's publication — and explained in the previous chapter — all enrolled decrees have been digitised on the AALT's website.[7] As such, it is possible to undertake a subject-specific search and try to follow a case involving bankruptcy in reverse chronological order.

However, this is only possible for decrees that have been enrolled and subsequently catalogued online. The remainder of decrees are only discoverable through searching and cross referencing the entry book. Therefore, it is the emphasis on a 'known decree' which makes Horwitz's assertion a viable option, as we must already have a clear understanding of the specific details of a case. Without this information, it is not possible to begin with the entry book. One final option is to begin at the evidence stage of a suit, either with depositions or exhibits, and attempt to work backwards and discover pleadings, and then to work forwards and discover any other supplementary documentation linked to the case, and hopefully, a final decree. Again, there are filing and cataloguing difficulties to overcome to successfully pursue this approach, as only depositions occurring outside of the jurisdiction of London are discoverable on the online catalogue.[8] Furthermore, as we have seen in chapter four, the serendipitous nature of the survival of exhibits means that it is not always possible to assign the surviving documentation to a specific case, or an individual bankruptcy. However, a case that made it to the more expensive stage of submitting evidence was more likely to result in a final judgement from the court.[9] As such, it is the chapters relating to depositions and exhibits which provide a sound starting point to undertake this approach and,

[6] Ibid, p.96, my italics.
[7] AALT, 'Chancery Final Decrees'.
[8] The filing of country depositions was explained in detail in chapter three.
[9] Horwitz, *A Guide to Chancery Equity Records*, p.26.

as explained above, this chapter utilised the twenty-nine references relating to Masters' exhibits as a starting point for following a case through to completion.

To begin with, the four references already discussed in detail in chapter four were excluded, in an attempt to discover new information relating to unused material. Of the remaining references, several contained a wide range of documentation, which on the surface seemed interesting, but could not be utilised or discussed in any meaningful way. This was due to the seemingly random nature of the documents and their subsequent survival, meaning it was difficult to place them within the bankruptcy process or the procedure of the court. However, from trying to identify the named plaintiffs, the named defendants, the named assignees, and potentially the name of the bankrupt, it was possible to match two of these references to multiple pleadings on The National Archives' online catalogue. Further procedural information was gathered from working through the entry books. Finally, it was necessary to search for any additional material that related to these suits, such as affidavits, Masters' reports, Masters' documents, Masters' papers, and Masters' accounts. *Hancock v Halliday* returned an unusually large number of additional materials and so became the focus of this chapter. Below is a brief list of all extant material relating to this case, which will be referred back to throughout.

Document Overview *Hancock v Halliday*

Pleadings: There are 5 pleadings for this case:

1. **TNA, C11/549/27 – this reference contains 4 documents:**
    a. A bill of complaint, dated 1 May 1742.
    b. An answer from Mary Halliday, dated 26 June 1742.
    c. A bill of complaint (amended), dated 6 August 1742.
    d. An answer from Edward Halliday, dated 18 March 1743.
2. **TNA, C11/552/25 – this reference contains 1 document:**

a. A further answer of Mary Halliday to the amended bill of complaint, dated 19 October 1743.

3. **TNA, C11/555/35 – this reference contains one document:**
    a. A further answer of Mary Halliday, dated 4 September 1744.
4. **TNA, C/12/1122/39 – this reference contains 1 document:**
    b. A bill of complaint, dated 30 April 1745.
5. **TNA, C12/1115/5 – this reference contains 2 documents:**
    c. A copy of interrogatories submitted by the plaintiffs for the examination of Mary Halliday, relating to an order from the Lord Chancellor, dated 11 July 1746.
    d. An examination of Mary Halliday, dated 23 October 1747.

Decrees: There are 26 orders or decrees relating to this case, the majority of which were procedural. However, on two occasions the case came to be heard in open court. The final decree is dated 4 June 1752.

Masters' Exhibits: There are 2 references in Masters' Exhibits:

1. **TNA, C104/221 – This reference contains 24 documents:**
    a. These include inventories, a list of goods to be sold, and a copy of a legal case, all of which were dated between 1733-1740.
2. **TNA, C128/10 – this reference contains 1 document:**
    a. Interrogatories submitted by the plaintiffs for the examination of Mary Halliday.

Affidavits (Stored Off-Site):

1. **TNA, 31/103 (1742)**
    a. This reference should hold all affidavits for the year 1742, and there should be 2 affidavits for this case (no.61, 185).
2. **TNA, 31/104 and C31/105 (1743)**
    a. There are 3 references which mention Halliday (no.363, 364, 365).

Chancery Masters' Papers (Stored Off-Site):

1. **TNA, C120/854 – This reference contains 17 documents:**
    a. The majority of these are affidavits.

Office of Accountant General of Chancery – Indexes and Accounts (Stored Off-Site):

1. **TNA, C276/6 – this reference contains 1 entry:**
    a. Confirming that money had been deposited in the Bank of England for the credit of the case.

Chancery Masters' Reports and Certificates – (Stored Off-Site):

1. **TNA, C 38/504 – this reference contains 1 document:**
    a. An affidavit that Master Skurray had left all relevant papers and books with the Master.

The five pleadings and the two references in Masters' exhibits were discovered online. The twenty-six orders or decrees were identified by physically searching the entry book at The National Archives — in chronological order from the date of the first bill of complaint in 1742 — and then ordering the document reference. This was a time consuming and tedious process as the order book is divided into four terms per calendar year and are only catalogued in a rough alphabetical sequence.[10] The remaining documents are stored 'off-site', meaning they require at least three working days' notice to be produced. The filing, cataloguing, and survival of these documents creates substantial barriers to be able to follow a case through to completion. Firstly, the indexes for the off-site documents are not available online and are only available to view in Kew.[11] However, certain documents, such as Masters' papers, do not have a reliable index available to the public, and are simply listed as undated 'Obsolete Lists, Indexes and Miscellaneous Summaries and Reports', on the online catalogue.[12] This is because the extant index was created by early modern contemporaries while the documents

[10] For example, all of the first-named plaintiffs whose surname begins with H are listed for Hilary, Easter, Trinity, and Michaelmas Term within a calendar year, but these are not in a strictly alphabetical order.
[11] For example, the physical indexes for Chancery affidavits can be found at IND 1/14558 which is a nineteenth century compilation of the original indexes (IND 1/7285 through to IND 1/7293) and provides an index of all named plaintiffs beginning with the letters H, I, J, and K, between 1700-1800 in the relevant series C31/66 through to C31/298. This index also provides further registers of affidavits in C41 through to C41/53. In order to be thorough, it is necessary to search the relevant years for all of these indexes. Similarly, the relevant years for Chancery Masters' Reports and Certificates can be found at IND 1/2011 (1742) through to IND 1/2021 (1752), and the off-site documents can be found in the C38 series.
[12] A search for 'Chancery Masters Papers' on TNA catalogue, returns references OBS 1/322 through to 349; see also C217/139, described as 'bundle of "draft memoranda relating to Master' Boxes" (? Draft index to Chancery Masters' Papers)' (1700-1900).

were still in use. As such, they were continually being moved, and approximately twenty per cent of documents are not where advertised on the indexes.[13] I was fortunate enough to discover the documents listed in the Masters' papers series due to a private index compiled on an Excel spreadsheet by a — now retired — archivist at The National Archives, who kindly agreed to search for, and share with me, the off-site reference for this case.[14] Just from this brief explanation, the practical difficulties are obvious, as the majority of sources cannot be ordered while on a short research trip to London. Ultimately, it took three separate trips from York to correctly locate, call up, and photograph the off-site documents alone.

One final issue relates to the practicality of reading the documents. It is more efficient to photograph documents at The National Archives and read the digital version at home. Not only is this more efficient in terms of time, but it also aids palaeography and transcription. However, the way in which the case progressed, and the details of other documentation, only becomes apparent once you have read these documents — especially decrees — in their entirety. This then necessitates the need to return to Kew to track down further proceedings that are specified throughout the case. All in all, this process took approximately six visits — lasting roughly three to four days each — to track down the material listed above, and be confident that no other sources can be expected to be reasonably identified.[15] Once the above effort has been put into locating the correct references, there is again no guarantee that the documents have survived, or if they have, that they are of a suitable standard to view. In a similar manner to Masters' papers, only the original indexes are available for affidavits.

[13] While this is not uncommon in other series, for example, up to fifteen per cent of documents from C11 have been misfiled in the later series of C12, they can still be identified on TNA online catalogue. The staff at TNA have refused to put the index online with such a large error rate, as they do not have the necessary resources to correct any subsequent requests or complaints.
[14] I would like to thank Liz Hore at TNA for providing me with this reference.
[15] In a similar manner to pleadings, there are a number of documents which relate to the bankruptcy of Edward Halliday but are not part of this specific suit. For example, TNA, C107/201, 'RE HALLIDAY, bankrupt' (1745).

Furthermore, affidavits were boxed in the year they were made — rather than in the year of the suit or the order from the court — and while they are not in chronological order, they have been assigned a number which corresponds to the original index.[16] We can see in the 'Document Overview' that two affidavits were listed for 'Hancock v Halliday' in 1742, and three more had 'Hancock' as the named plaintiff throughout 1743 and 1744.[17] The entirety of the extant 1742 affidavits were divided into two boxes, the first numbered 1-499, and the second numbered 500 onwards. However, upon calling up this reference, the first box was missing, and no staff — either at the off-site building or in Kew — were aware it was unaccounted for, and have not been able to locate it.[18] Furthermore, the affidavits for the year 1743 were so badly damaged that they were illegible, and prone to further damage from handling.[19] Yet, while the specific affidavit series were of no use for this process, several affidavits were discovered in Masters' papers, and one in Masters' reports and certificates. Similarly, one of the references in Masters' exhibits was a set of interrogatories to be put to Mary Halliday, an exact copy of which appears in one of the pleadings, demonstrating how similar documents could end up filed in completely different sections of a suit in Chancery.[20]

As we have seen throughout the thesis, it is possible for a sole issue to involve multiple suits being executed across several legal jurisdictions. This is certainly the case in *Hancock v Halliday*, as this particular failure involved numerous cases in Chancery. For example, a simple online search for the term 'Edward Halliday' on The National Archives' online catalogue returns thirty-five pleadings between 1730 and 1753, all of which appear to relate

[16] Horwitz, *A Guide to Chancery Equity Records*, p.101.
[17] TNA, IND 1/14559, Index to Chancery affidavits, 1700-1800 (I-K), returns TNA, C31/103, Affidavits (1742); C31/104 and C31/105 (1743).
[18] Ibid, the second box began at number 500.
[19] Ibid.
[20] TNA, C12/1115/5, 'Hancock v Halliday exam.' (1746); C128/10, 'HANCOCK v HALLIDAY' (1746).

to the same Edward Halliday.[21] A more refined search of 'Edward Halliday' and the term 'bankrupt' returns fifteen pleadings, all of which definitively relate to the bankruptcy of the same Edward Halliday during this period.[22] These pleadings range in description from 'Hancock v Hippie', whereby the plaintiffs were the assignees of Edward Halliday and the defendants were Elizabeth Hippie and several others; to 'White v Bull', whereby the plaintiff was a widow named Annie White and the defendants were both the original, and new, assignees of the bankrupt.[23] While the complexities of the bankruptcy of Edward Halliday — and particularly the multiple commissions of bankruptcy — are explained in greater detail below, the point to make here is that it is possible to trace an individual bankruptcy through the stages of proceeding in Chancery. However, this would be an extremely complicated and time-consuming process, as it would involve multiple suits with different named plaintiffs and defendants. Furthermore, these suits would be treated individually by the court and would be subject to separate proceedings. Ultimately, what is provided below is an isolated case involving the bankruptcy of Edward Halliday. While one such suit can only provide a snapshot of the entire bankruptcy which was played out in Chancery, we can still analyse the manner in which undertaking this approach alters the presentation of failure in comparison to the rest of the thesis.

[21] From the online description alone, it is impossible to decipher for certain that these suits all refer to the same Edward Halliday, although I would suggest that it is more than likely that they do; TNA, 'Discovery' Online Catalogue, stable URL: https://discovery.nationalarchives.gov.uk/results/r?_aq=%22edward%20Halliday%22&_nq1=c104&_nq2=c101&_cr=c&_dss=range&_sd=1730&_ed=1760&_ro=any&_st=adv, accessed 25/11/2019.
[22] I have read the 15 pleadings, but not the 35 references, TNA, 'Discovery' Online Catalogue, stable URL: https://discovery.nationalarchives.gov.uk/results/r?_aq=%22edward%20Halliday%22&_nq1=c104&_nq2=c101&_or1=bankrupt&_cr=c&_dss=range&_sd=1730&_ed=1760&_ro=any&_st=adv , accessed 25/11/2019.
[23] TNA, C11/549/21, 'Hancock v Hippie' (1742); C11/798/15, 'White v Bull' (1742).

Hancock v Halliday (1742-1752)

Before delving into the narratives presented in these documents, it is first necessary to provide a chronological overview of *Hancock v Halliday* as it was presented to the court between 1742-1752. The first bill of complaint was submitted on 1 May 1742. The plaintiffs were three assignees — Jonathan Hancock, Richard Hooper, and Abraham Clavey — and two further creditors — Nathaniel Mortimer and Stephen Skurray — of Edward Halliday, a clothier. The named defendants were the bankrupt Edward Halliday, his mother Mary Halliday, John Phelps, and Robert Mears, all of whom resided in Somerset. The plaintiffs accused John Phelps — who was an attorney and the original clerk of the commission of bankruptcy — of having some documents relating to the commission in his possession. Despite suing Phelps at common law, they had still not received any documentation from Phelps. Similarly, they accused Robert Mears of having some of the bankrupt's goods in his possession. However, the suit centred around the dealings of the Halliday family.[24] We have seen throughout the thesis how Chancery bills spoke to failures which had occurred sometime in the past, as individuals involved in a commission of bankruptcy sought the aid of the court to complete or repair the debt-recovery process. Yet, this case is striking as Edward Halliday had been declared a bankrupt nine years previously, in December 1733.[25] As such, the snapshot in Chancery relates to a narrative of bankruptcy which had been ongoing since 1733 and was still contested as late as 1752. The cause first came to be heard in open court on 16 April 1746. We have seen in the previous chapter, how the court would summarise the pertinent legal facts of the case, which were recorded in a lengthy decree. The complaint stated that several 'Writts of Extent' were issued out of the Court of Exchequer against the lands and goods of the bankrupt for 'a large sum of His Majesties Money' in December

[24] TNA, C11/549/27, 'Hancock v Halliday' (1742), Bill of Complaint.
[25] The *London Evening Post* declared that Edward Halliday was indicted for failing to surrender to the commissioners, 14 December 1736, p.3.

1733.[26] Subsequently, the Sheriff 'Extended Inventoryed and appraised His household goods Dyeing Intensills Dye Stuff Wool Yarn Lint Oil Soap and other Materials for Dyeing and making Cloth' which were in the bankrupt's dwelling house in Froome, Somerset. However, in order to prevent the estate from being sold, Mary Halliday asked several family members — George Locke the bankrupt's uncle and Jane and Elizabeth Hippie, the bankrupt's aunts — to give their bond to pay the debt to the Crown. As these three family members were now creditors of the bankrupt, Mary persuaded them to take out a commission of bankruptcy against Edward on 8 December 1733.[27]

The plaintiffs further claimed that while the assignees raised money out of the estate to pay the Crown, they permitted the bankrupt to live in the same residence, and 'carry on his Trade the same as he did before some times in the name of his son an Infant some times in the name of his Mother the Defendant Mary Halliday'. As such, the plaintiffs sought to replace the corrupt assignees and petitioned the Lord Chancellor on 25 March 1740, complaining of the 'misbehaviour of the Commissioners and assignees' and asking for the commission to be superseded. On 26 April 1740, the Lord Chancellor superseded the old commission and named Jonathan Hancock, Richard Hooper and Abraham Clavey — who had subsequently died — the new assignees. The three assignees took possession of the bankrupt's estate on 12 August 1740. The decree again emphasised the core complaint of the plaintiffs, notably that the bankrupt had continued 'in the Dying Trade in the same house with the same Utensills and in the same manner as he did before his Bankruptcy and used up the Dye Stuff Coals Wood and other materials of the Bankruptcy to the value of £2000'. However, in Hilary term 1741, Mary Halliday brought an action in Common Pleas against the new assignees for

[26] The OED describes a Writ of Extent as 'a writ to recover debts of record due to the Crown, under which the body, lands, and goods of the debtor may be all seized at once to compel payment of the debt'.
[27] TNA, C33/385, 'Hancock v Halliday', 16 April 1746, f.559-561.

‘breaking and Entering her Dwelling house Dye house Warehouse’. While the plaintiffs — as defendants at common law — pleaded not guilty, Mary received a verdict for £200 as the plaintiffs could not gain possession of the documentation relating to the first commission of bankruptcy, and as such, made no legal defence. Ultimately, Mary gained a verdict for £200 damages ‘without giving any Evidence’.[28]

It is worth pausing on this specific mention of a common law case in order to discuss the way in which the court formulated the narrative concerning the failure of Halliday in a final decree. In a similar manner to the approach undertaken by Cordelia Beattie, Chancery material provides specific details about how a single issue — in this instance the bankruptcy of Edward Halliday — was litigated in multiple legal arenas. Indeed, while the initial narrative of the failure of Edward Halliday stretches back to 1733, the fact that Mary Halliday had brought an action against the assignees provides a sense of urgency to the Chancery narrative, as the plaintiffs were forced to initiate a suit in order to seek an injunction against the common law case. This was subsequently granted five days after the initial bill of complaint, on 6 May 1742. However, what is important to note, is that by analysing the case in Chancery, we are not analysing the beginning of the debt-recovery process, but rather, we are joining a process that was well-established and ongoing within the local community. As such, the narrative presented in pleadings, and subsequently summarised in decrees, is similar in nature, as while it outlines the initiation of the process in Chancery, it also consistently refers back to pertinent details surrounding the bankruptcy of Edward Halliday, which occurred several years previously.

As the court summarised Mary’s answers, she acknowledged that the bond given to the Sheriff, as well as the original commission of bankruptcy, were taken out at her request.

[28] Ibid.

However, Mary asserted that she lived in the same estate as her son and the plaintiffs had illegally entered her property and seized several of her own, personal goods. Indeed, Mary provided the will of her mother — named Elizabeth Hippie and dated 15 April 1723 — which Mary claimed proved that the furnaces and several utensils had been inherited by her upon her mother's death in 1725. Mary claimed that the verdict at common law was only £175 — a sum that was eventually agreed by both parties — and that at the time of his bankruptcy, Edward owed her over £1000 in rent and other debts. Once the summary of the case was concluded, the court ordered the plaintiffs to pay £175 to the credit of the cause, so that the Chancery case, and the injunction against Mary's proceedings at common law, could continue. Furthermore, all parties were to provide any documentation relating to the bankruptcy of Edward Halliday, and Mary was to 'come to an account' before a Chancery Master to specify any goods or money of the bankrupt which had come into her possession since her son's failure. Finally, all parties were to proceed to a new action of trespass case at common law, as the plaintiffs 'ought to have Opportunity of Trying the Meritts thereof'. As such, the Lord Chancellor ordered that neither side could plead precedent of the former case or the statute of limitations. In lieu of the correct documentation, the Lord Chancellor stated that the initial commission of bankruptcy was to be entered in the trial as a legal fact.[29] Six years later in 1752, the final decree explained that the case never returned to the common law, as 'the Partys have Agreed to refer the terms in difference to arbitrators on Condition that the said £175 shall be first paid back to the said Plaintiffs'.[30] Ultimately, after ten years of litigation in Chancery, and nearly twenty years since the bankruptcy of Edward Halliday, both sides had agreed to meet with arbitrators to settle their outstanding financial accounts.

[29] Ibid.
[30] TNA, C33/397, 'Hancock v Halliday', 4 June 1752, f.428.

As well as providing a summary of the case, orders and decrees give valuable insights into the way in which the suit progressed. For example, we can see from the 'Document Overview' that the plaintiffs submitted a total of three bills of complaint. The first bill of complaint was amended on 6 August 1742, but it is unclear why this occurred. Indeed, the 'one Great cause of Complaint' in both bills appeared to be identical, namely that the former assignees, 'permitted the Bankrupt and his family to keep his possession of and live in the Same house use the Same household Goods and carry on the Same Trade with the Same Utensills and in the same manner after his Bankruptcy as he had done before'. Ultimately, the utensils were 'worn out and greatly lessened in Value' as the assignees refused to take them and 'turn them into money'.[31] However, a decree dated 6 August 1742, clearly stated that the plaintiffs 'be at Liberty to amend their Bill as they shall be advised with Costs and that the Defendant Mary Halliday do answer such amendments … the plaintiffs requiring no further Answer from the other Defendants who have already answered'.[32] In this instance, we see some stark differences between the type of language presented in decrees, and that presented in pleadings, as decrees were explicit about the procedural elements of the case. Indeed, if it were not for the information provided in the decree, specific details relating to the plaintiffs' line of questioning would have been missed, as upon closer inspection, it becomes clear that the plaintiffs were attempting to distinguish between Mary's claims to any goods seized, and the bankrupt's claims to such goods. Ultimately, the plaintiffs had subtly amended their bill in an attempt to gather information from Mary regarding the work house, the dye house, the dwelling house, and the shop. For example, they wanted Mary to come to a fair account for the 'estate and Effects She, or he the Bankrupt for her, have or hath possessed used or disposed of and for the use of the Furnaces and Dyeing Utensills and for the Grinding

[31] These statements appear verbatim in both bills, TNA, C11/549/27, 'Hancock v Halliday' (1742), Bill of Complaint, Amended Bill of Complaint.
[32] TNA, C33/377, 'Hancock v Halliday', 6 August 1742, f.622.

Dyewood'. Similarly, the plaintiffs asked whether the bankrupt 'did not Build all or part and what part of the said Dwelling house and the said Dye house and Shop or any and which of them and what other Buildings now claimed by her'. Within these examples, we can see how the plaintiffs were attempting to establish whether or not the bankrupt was owed any wages from Mary for the work he had undertaken in improving the house.[33] Finally, on 18 March 1743, Edward Halliday submitted an answer to both bills of complaint, whereby he denied any involvement in the initial bond provided to the Sheriff, or the commission of bankruptcy.[34]

In a similar manner, the plaintiffs submitted another bill of complaint on 30 April 1745, naming the bankrupt's son, John Halliday as a defendant.[35] This seems to have been done for the sole purpose of gaining an injunction against John proceeding against the plaintiffs at common law. It seems probable that John never answered the bill, as a decree dated 13 May 1745 established that after three subpoenas demanding John appear and answer an injunction was granted, and no reference was made to John Halliday for the remainder of the suit.[36] Horwitz's assertion that decrees can be used to 'fill in gaps in the history of the case' is certainly true, but decrees can also give vital information regarding the progress of a suit, as well as providing a legal summary of the pertinent facts of the case.[37] However, as with any succinct overview, some elements have been omitted, and within pleadings there was a wider scope to include interesting details. For example, in Mary's first answer she claimed that a commission of bankruptcy had been issued against her, but her sister Elizabeth Hippie had satisfied the petitioning creditor and they agreed to have the commission superseded.[38] While

[33] TNA, C11/549/27, 'Hancock v Halliday' (1742), Amended Bill of Complaint.
[34] Ibid, Answer of Edward Halliday.
[35] TNA, C12/1122/39, 'Hancock v Halliday b.' (1745), Bill of Complaint.
[36] TNA, C33/383, 'Hancock v Halliday', 10, 11, 13 MAY 1745, f.347, f.415, f.415.
[37] Horwitz, *A Guide to Chancery Equity Records*, p.96, my italics.
[38] TNA, C11/549/27, 'Hancock v Halliday' (1742), Answer of Mary Halliday.

this is a very specific detail, it highlights how certain aspects of the debt-recovery process were omitted from decrees, demonstrating disparities between the legal summary on the one hand, and plaintiffs' accusations or defendants' refutations on the other. In terms of the differences between the narrative provided in these documents, pleadings forcefully demonstrate what each side of the case were demanding from the court, while also containing fascinating and specific details which provide insights into wider aspects of the bankruptcy process. In contrast, the decrees and orders clearly show how the suit progressed, which can speak to the motivation and intended aims behind submitting supplementary documentation. Indeed, when a cause came to be heard in open court, lengthy decrees summarised what were considered pertinent legal arguments relating to each party, and ultimately, what was considered to influence the outcome of a suit.

In turning to the evidentiary stage of proceeding, it is clear that parties utilised interrogatories and depositions in order to interrogate witnesses and gather further information about specific aspects of failure. In their set of interrogatories, the plaintiffs drew attention to a number of discrepancies between Mary's three answers. They asked whether in her first answer she claimed to have 'made about Twenty pieces of Broad Cloth after your son became Bankrupt in which he assisted you', whereas in her third answer this had risen to fifty. In response, Mary claimed to be eighty two years old, and the difference between the two answers 'was occasioned … by reason of this examinant not having her said Books to refer to at the time of putting in her said Answers and the decay of this Examinants memory and Understanding by reason of this Examinants said great Age'. When trying to explain why she 'did not forbid the Sherriffe' from taking and appraising her own goods, Mary claimed this was 'because of the great Concern and Affliction which this Examinant was then in on Account of the Misfortunes of her said Son which at that time had so great an Effect upon this Examinant as

to prevent her from taking the proper precautions necessary'.[39] This is a rare reference to the personal circumstances of Mary, as we gain an insight into her age and her emotional state, as she claimed to be unable to act in the correct and proper manner. We also see the bankruptcy described as a 'misfortune', details which would have been missed if we were relying solely on the court's description of the case, or the pleadings alone. These were interrogatories designed and created by the plaintiffs to be put specifically to Mary by a Chancery Master. In focusing on specific discrepancies in Mary's answers, the plaintiffs were attempting to strengthen their claim to the bankrupt's estate, by demonstrating that they held a much wider claim than was previously assumed. Mary's answers read in a similar manner to the narratives discussed in chapter three on depositions, as we see specific language used which speaks to her physical and psychological frailty. Ultimately, we see the narrative at this stage of proceeding change, as there is a specific focus by the plaintiffs on the discrepancies in Mary's statements. This appears to have been done for two purposes: firstly, to discredit Mary as an unreliable witness, and secondly, to further clarify the exact work and goods that Mary undertook after the time of the bankruptcy.

Turning to exhibits, a central aim of this chapter was to examine whether the additional material adds background or context to the seemingly random nature of the survival of these documents, in order to enhance our understanding of bankruptcy within the court. We have already seen how the affidavits series were unusable, the Masters' reports and certificates only contained a formulaic affidavit, and the Chancery accounts revealed no new information regarding the £175 being paid by the plaintiffs in credit for the cause.[40] However, the Masters' papers contained a number of documents, and it is worth pausing to examine these in detail. Firstly, the seventeen documents were all left with the Master between 13 July 1747

[39] TNA, C12/1115/5, 'Hancock v Halliday' (1746), Examination of Mary Halliday.
[40] TNA, C276/6, 'Office of Accountant General of Chancery – Indexes and Accounts', 18 January 1745, f.1164.

and 30 June 1749, the majority of which specifically referenced the decree of 16 April 1746, whereby the Lord Chancellor ordered all parties to submit documents to be examined by a Master. Fifteen of these documents are themselves affidavits, one is a list of the goods that the plaintiffs were claiming from the bankrupt's house, and the final document is dated 3 February 1747 and signed by Mary Halliday, which explained that she desired a commission for her examination in the country, and to be discharged of any responsibility for the goods that were claimed by the original commission of bankruptcy.[41] In analysing affidavits as a type of document, they have not been discussed in detail throughout the thesis as they do not constitute a stage of proceeding, and are instead simply a supplementary document which could be produced at any stage of a suit. Indeed, the majority of affidavits in this suit were procedural and formulaic in nature, for example, explaining that 'The Plaintiff Nathaniel Mortimer maketh Oath that he hath not nor ever had in his Custody or power any Deeds Papers or Writeings Relating to the matters in question in the action of Trespass mentioned in the Decree made in this Cause nor hath he or ever had any Deeds or Writeings in his Custody or Power relating to the Estate at Corsley in the said Decree mentioned'.[42] However, there are a number of affidavits relating to Stephen Skurray, a plaintiff and solicitor to the renewed commission of bankruptcy. Three are exact copies, the first was left on 25 April 1748, the second on 30 June 1749, and the third is undated. Each copy listed the documents that had come into Skurray's possession and been left before a Master. Although there are three documents in Masters' exhibits which are not numbered, the affidavit lists twenty-one documents in number order, which align perfectly with the remaining documents in Masters' exhibits. Some examples will illustrate this point:

> 3. A paper Writeing marked (No.3) Entitled Pools Case and purports to be a Case concerning a Distress for Rent of Goods fixt.

[41] TNA, C120/854, 'Chancery: Master Tinney's Documents. Unsorted. See IND 1/6617' (dates unknown).
[42] Ibid.

6. A torn piece of paper marked (No.6) with writeing upon it of particulars of the Bankrupt Hallidays Goods as this deponent believes.
9. Being Ten sheets of Printed papers purporting to be particulars of the Estates of the Bankrupt and of his Goods to be Sold by the assignees.
19. A paper marked (No.19) Entitled an Inventory of the Goods seised and Distrained by me Mary Halliday of Froome Selwood in the County of Somerset widow this 9th day of July 1735 in the house of Edward Halliday in Froome aforesaid Clothier being 210:16:0 for arrears of Rent due to me the said Mary Halliday at Midsumer last past for the Rent aforesaid.[43]

When we compare the documents in exhibits to the list provided in Skurray's affidavit, some interesting details emerge. Firstly, the paper marked 'No.6', as displayed in Figure 9, was indeed torn and damaged, being an inventory of goods taken in Froome, Somerset, totalling £210 16s. 8d. Secondly, when we look at Figure 10, we can see that the ninth document was a printed sheet, specifying goods to be sold by the assignees on 27 December, ten copies of which still survive in the exhibit entry.[44]

[43] Ibid.
[44] TNA C104/221, 'Hancock v Halliday' (c 1734 – c 1740).

Figure 9: TNA C104/221, 'Hancock v Halliday' (c 1734 – c 1740), 'An Inventory of Goods seized by Mary Halliday, 9 July 1735'

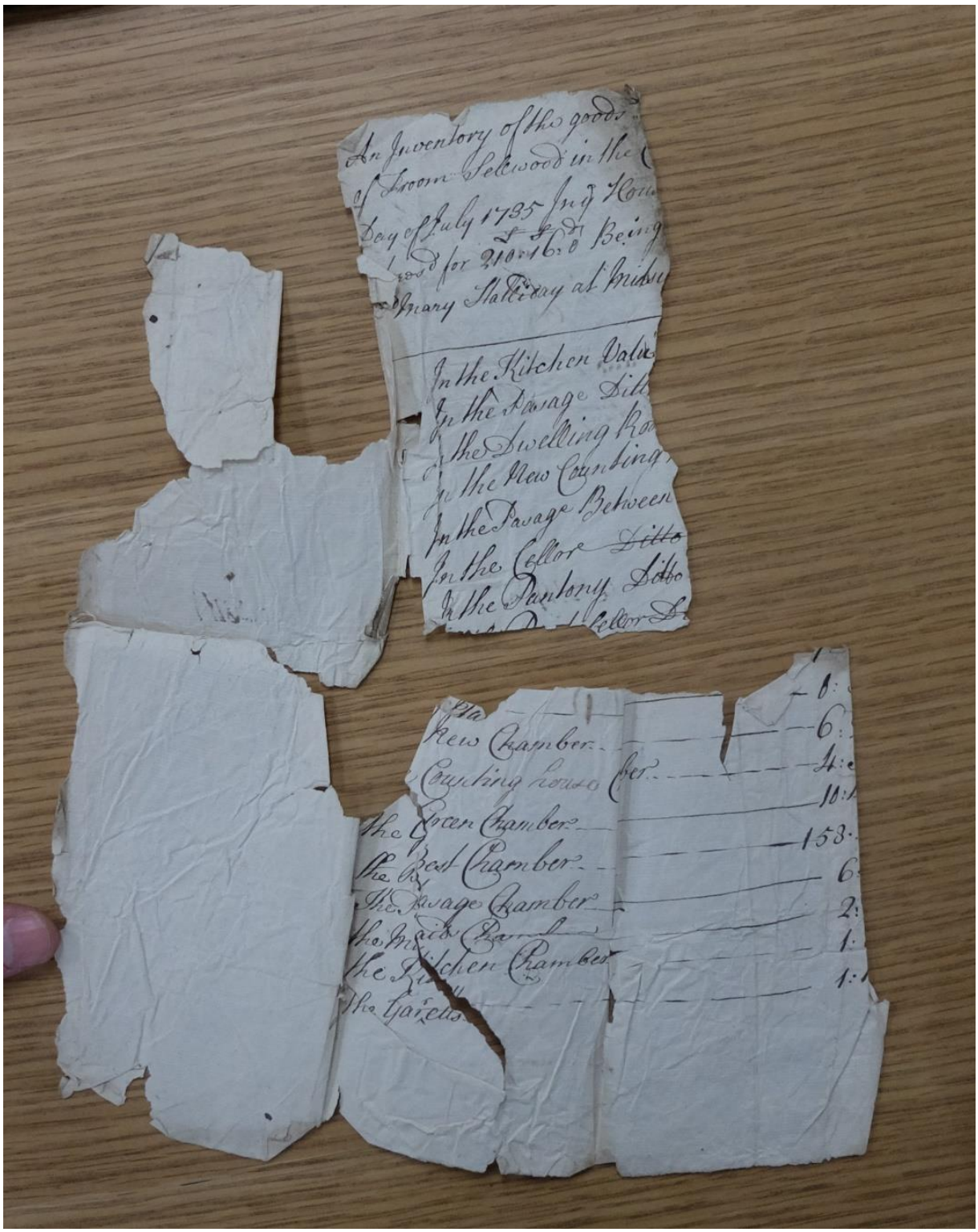
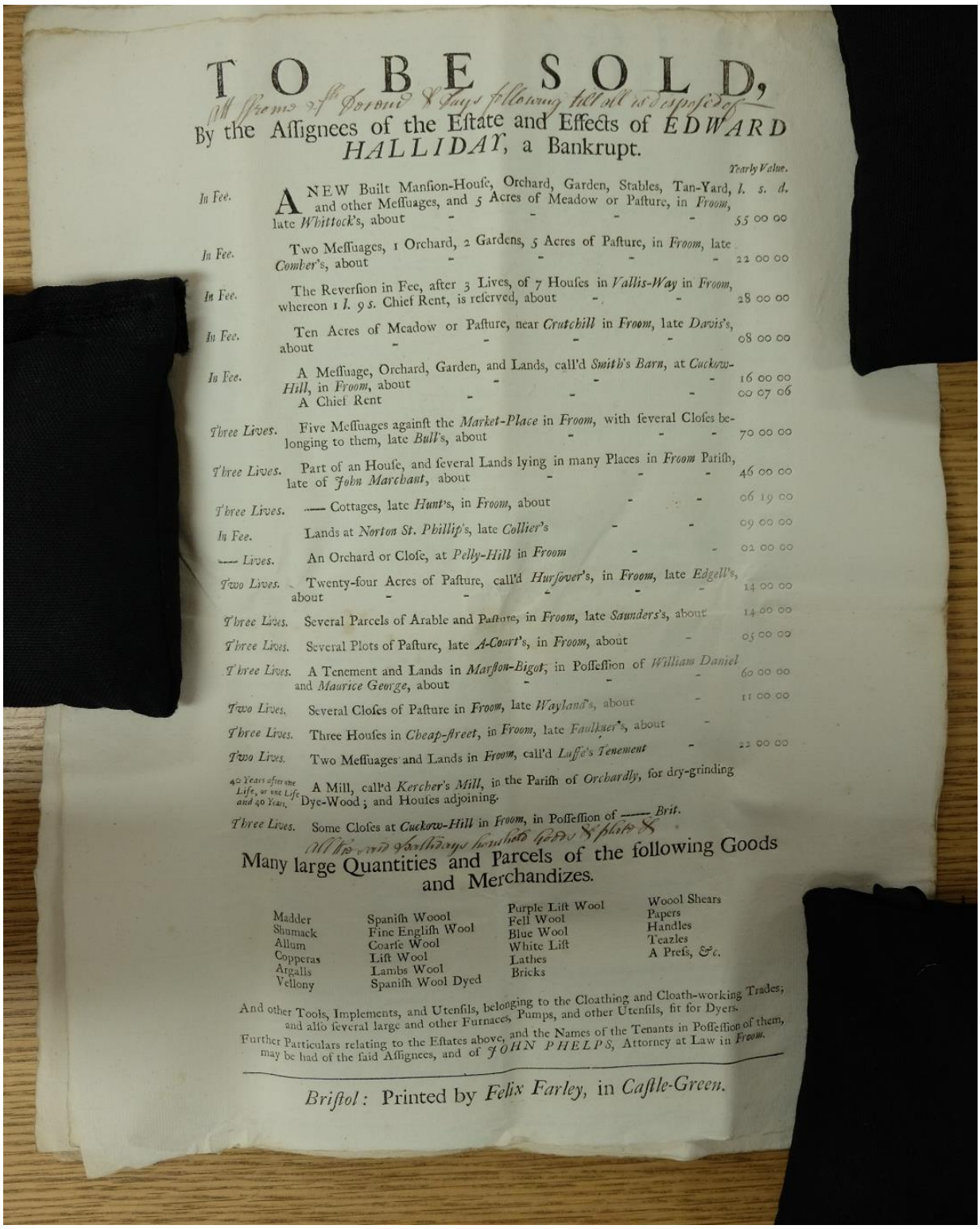


Figure 10: TNA C104/221, 'Hancock v Halliday' (c.1734 – c.1740), 'Goods to be Sold by the Assignees of the Estate and Effects of Edward Halliday'



TO BE SOLD,

By the Aſſignees of the Eſtate and Effects of *EDWARD HALLIDAY*, a Bankrupt.

		Yearly Value. l. s. d.
In Fee.	A NEW Built Manſion-Houſe, Orchard, Garden, Stables, Tan-Yard, and other Meſſuages, and 5 Acres of Meadow or Paſture, in *Froom*, late *Whittock*'s, about	55 00 00
In Fee.	Two Meſſuages, 1 Orchard, 2 Gardens, 5 Acres of Paſture, in *Froom*, late *Comber*'s, about	22 00 00
In Fee.	The Reverſion in Fee, after 3 Lives, of 7 Houſes in *Vallis-Way* in *Froom*, whereon 1 *l.* 9 *s.* Chief Rent, is reſerved, about	28 00 00
In Fee.	Ten Acres of Meadow or Paſture, near *Crutchill* in *Froom*, late *Davis*'s, about	08 00 00
In Fee.	A Meſſuage, Orchard, Garden, and Lands, call'd *Smith*'s *Barn*, at *Cuckow-Hill*, in *Froom*, about	16 00 00
	A Chief Rent	00 07 06
Three Lives.	Five Meſſuages againſt the *Market-Place* in *Froom*, with ſeveral Cloſes belonging to them, late *Bull*'s, about	70 00 00
Three Lives.	Part of an Houſe, and ſeveral Lands lying in many Places in *Froom* Pariſh, late of *John Marchant*, about	46 00 00
Three Lives.	—— Cottages, late *Hunt*'s, in *Froom*, about	06 19 00
In Fee.	Lands at *Norton St. Phillip*'s, late *Collier*'s	09 00 00
—— *Lives.*	An Orchard or Cloſe, at *Pelly-Hill* in *Froom*	02 00 00
Two Lives.	Twenty-four Acres of Paſture, call'd *Hurſover*'s, in *Froom*, late *Edgell*'s, about	14 00 00
Three Lives.	Several Parcels of Arable and Paſture, in *Froom*, late *Saunders*'s, about	14 00 00
Three Lives.	Several Plots of Paſture, late *A-Court*'s, in *Froom*, about	05 00 00
Three Lives.	A Tenement and Lands in *Marſton-Bigot*, in Poſſeſſion of *William Daniel* and *Maurice George*, about	60 00 00
Two Lives.	Several Cloſes of Paſture in *Froom*, late *Wayland*'s, about	11 00 00
Three Lives.	Three Houſes in *Cheap-ſtreet*, in *Froom*, late *Faulkner*'s, about	
Two Lives.	Two Meſſuages and Lands in *Froom*, call'd *Luſſe*'s *Tenement*	22 00 00
40 Years after one Life, or one Life and 40 Years.	A Mill, call'd *Kercher*'s *Mill*, in the Pariſh of *Orchardly*, for dry-grinding Dye-Wood; and Houſes adjoining.	
Three Lives.	Some Cloſes at *Cuckow-Hill* in *Froom*, in Poſſeſſion of —— *Brit.*	

Many large Quantities and Parcels of the following Goods and Merchandizes.

Madder	Spaniſh Woool	Purple Liſt Wool	Woool Shears
Shumack	Fine Engliſh Wool	Fell Wool	Papers
Allum	Coarſe Wool	Blue Wool	Handles
Copperas	Liſt Wool	White Liſt	Teazles
Argalls	Lambs Wool	Lathes	A Preſs, *&c.*
Vellony	Spaniſh Wool Dyed	Bricks	

And other Tools, Implements, and Utenſils, belonging to the Cloathing and Cloath-working Trades; and alſo ſeveral large and other Furnaces, Pumps, and other Utenſils, fit for Dyers.

Further Particulars relating to the Eſtates above, and the Names of the Tenants in Poſſeſſion of them, may be had of the ſaid Aſſignees, and of *JOHN PHELPS*, Attorney at Law in *Froom*.

Briſtol: Printed by *Felix Farley*, in *Caſtle-Green.*

These images demonstrate that the list directly aligns with the documents in exhibits. However, it also shows the contrasting standard and quality of evidence presented to a Chancery Master. The first document had clearly been presented to a Master in a torn and damaged state, while on the other hand, the assignees had gone through the time and expense of printing several copies of an advertisement in order to sell the estate and goods of the bankrupt. As seen in the fourth chapter, it appears that this printed sheet has gone through two stages of being utilised by the assignees. The first was to advertise the sale of goods, while the second was to inform the Master of the specific goods that had come into their possession, as well as their value and whether or not they had been sold.

The nineteenth document was a 'Notice of Distress' taken out by Mary against her son, whereby she had 'Seized upon the Goods in this Inventory Mentioned in your House in Froome Sellwood for two Hundred Ten Pounds and Sixteen Shillings for Arreares of Rent Due to me att Midsomer Last past and Locked part of the same up in a Chamber Called the best Chambers in your House'.[45] This aligns with the inventory provided above, which also specified £210 16s. although the 8d. is omitted. The final document is a summary of a legal case by William Salkeld, sergeant-at-law and renowned legal reporter, entitled 'Poole's Case', which suggested that things set up lessee for the convenience of trade are 'Removable Dureing the term and Seisable'. A summary of this case was that a tenant for several years made an 'under lessee' of a house in Holbourn to J.S who was as 'soapboiler' by trade. For the convenience of his trade, J.S put up 'Vales Coppers Tables Partitions and Paved the Backside'. Upon an action for debt issued against J.S, the sheriff seized these items and left the house 'Striped and in a Ruonous Condition So that the first lessee was Liable to make it Good'. The first lessee then brought a special action against the sheriff for the damage done

[45] Ibid.

to the house. It was held that the soapboiler could remove the structures he set up in relation to trade and that he might do it by the common law and not by virtue of any special custom in favour of trade: 'But after the term they become a Gift in law to him' and were therefore not removable. Ultimately, the main point of this case is that there is a difference between what the soapboiler did to carry on his trade, and what he did to complete his house, i.e. in installing hearths and chimney pieces which were held not removable by the sheriff to satisfy an outstanding debt. Clearly this case has a striking resemblance to *Hancock v Halliday* and seems to have been utilised as a form of evidence to inform the Master. However, as the specific details of whether Edward Halliday improved the estate for the benefit of his trade, or simply for the improvement of his living conditions, or even if Mary owed him any wages for such work, were never proven in Chancery, it is difficult to assign this as evidence for either the plaintiffs or the defendants.

In staying with the issue of the bankrupt's rent for a moment, another document contained in the exhibits was described by Skurray as, 'A paper writing marked (No.1) purporting to be a Case with Questions about the Defendant Mary Hallidays Distraining her Son the Bankrupts Goods for Rent'.[46] This document explained that Edward Halliday had rented the house he lived in from his grandmother until her death in 1725. Since that time, Edward continued 'in possession of the house and Grounds on the Same footing as he held it of his Grandmother without making any fresh Contract with his Mother'. Since his grandmother's death, a computation was made of the value of the property, and it was agreed that Edward would pay his mother £30 16s. rent per year. As Edward had paid this rent until 1728, Mary was owed over £150 for the five years of rental arrears. As such, the document asked four very specific questions regarding Mary's legal rights and the distress she had made of her son's goods, as

[46] TNA, C120/854, 'Chancery: Master Tinney's Documents. Unsorted. See IND 1/6617' (dates unknown).

well as the bond she had provided to the Sheriff. For example, 'Whether Mary Halliday might lawfully detaine for the whole five years Rent Due at the time the Extents Came to the Sheriffe or Could she do it only for One year or as all the Extents are now Discharged and the goods Destrained are still in the hands of Mary Halliday whether she may Detaine the same till her whole five years rent is Satisfied'.[47] Again, we see a document in exhibits which relates to very specific details regarding the relationship between Mary Halliday and her bankrupt son. However, there still remains a degree of ambiguity regarding the manner in which these documents were utilised as evidence in the case.

While it could be assumed that because these documents were all provided by the solicitor for the assignees, and the plaintiffs in the suit, they were utilised as evidence for the plaintiffs, this is not the case. For example, the use of the word 'purports' seems to be used in its most common sense of 'represent as its meaning', 'to express', or 'to set forth', suggesting that Skurray did not have an intimate knowledge of the documents.[48] Yet, this argument loses its coherence when it can be seen that Skurray uses 'purports' or 'purporting', even when directly discussing evidence that is clearly related to the plaintiffs, such as document number nine. Furthermore, within the entirety of the exhibits, there are clearly documents which can be assigned to one side or the other, such as the inventories of goods, which have been appraised by either side. At the same time, there remain a number of documents which are ambiguous in nature, even with the addition of Skurray's affidavit. Ultimately, while the narrative utilised in affidavits were procedural in nature — and largely took the form of an individual stating under oath that they had been asked to complete a specific task and had subsequently completed it — Skurray's description is useful in that it identifies the number and physical state of the documentation he had supplied to the Master. However, the affidavit

[47] TNA C104/221, 'Hancock v Halliday' (c.1734 – c.1740).
[48] OED.

does not clarify how each document was utilised in the suit. While of course, certain documents had obviously been provided by the plaintiffs or the defendants, some remain difficult to categorise, such as the legal case referenced above as number three. This is further complicated in bankruptcy proceedings, and certainly in this suit, as much of the evidence appears to have been initially utilised in the commission of bankruptcy, and then subsequently submitted before a Chancery Master.

Conclusion

In comparing this chapter to the those which have preceded it, a number of points are worth making. Firstly, in undertaking this approach we gain a greater appreciation of the complexities of the filing and cataloguing of additional sources — especially regarding the 'off-site' storage of documents — which have largely been placed within the context of the time and effort that has been exerted in identifying and tracking down these sources. In short, this has been a tedious, costly, and time-consuming process. Turning to the specific documents in detail, decrees and orders provide a great deal of additional information regarding the manner in which the court dealt with particular issues, as well as showing what the court felt were the important legal arguments presented by each side throughout the suit. As such, in order to understand the nuances and intricate details of suits, as well as the potential motivation and aims of submitting supplementary documentation, it is essential to identify all decrees and orders relating to a case. While this can be laborious, the process is simple enough and can be completed by manually searching the entry book in chronological order from the date of the first bill of complaint. As has been shown, the court would summarise the pertinent legal details of the case, and it is this process which created and presented the narrative of the court in these documents. However, several interesting details

of the suit would be omitted, and the pleadings provide forceful arguments and specific details about the wider history of the bankruptcy to which the suit was concerned. Similarly, any interrogatories, examinations, and depositions that occurred at the evidential stage of proceeding allowed for a fuller investigation of specific details of the suit. This can help to uncover personal information regarding parties and witnesses. Undoubtedly, this methodological approach has enabled a far greater understanding of the specificities of the case and the manner in which it progressed within the court.

While we learn more about the individual case-study, we must ask whether we have gained any new insights into the exhibits utilised in this chapter, and more broadly, whether this process has revealed anything new about bankruptcy in the court of Chancery. The surviving affidavits in Masters' papers mean it is possible to ascertain details relating to the physical condition, and the number of documents, which were submitted and never reclaimed before a Chancery Master. Furthermore, it becomes clear that the surviving documents in exhibits directly relate to this individual case. Yet, despite the additional knowledge that it was a solicitor to the commission, and one of the plaintiffs, who submitted these papers to the court, there remains a degree of ambiguity regarding the way in which they were utilised as evidence. Furthermore, the fortunate set of circumstances which led to the identification of Masters' papers means that this process, and certainly this individual case, is not representative of the accessibility of extant material relating to cases in Chancery. As such, undertaking the methodology employed in this chapter would not alter any observations made, and conclusions drawn, from the fourth chapter of the thesis. Indeed, this process further confirms the level of uncertainty surrounding the manner in which particular documents were selected — or simply brought to the court — and utilised as evidence to inform a Master. As it is unlikely that the indexes and registers relating to the off-site documents will be improved to an adequate standard in the near future, it seems unnecessary

to try to track down these additional documents, unless it is the aim to gain a truly detailed understanding of a limited number of cases. In terms of the specificities of bankruptcy, the most interesting details in this suit — the interconnected nature of family indebtedness, friends and relatives initiating a fraudulent commission of bankruptcy, accusations that the bankrupt had not been punished and was carrying on in his trade, fears of creditors not receiving a proportional share, debt recovery in the common law courts, and the use of documentation as evidence — have all been discussed in detail throughout the thesis. Ultimately, it must be said that the methodology applied in this chapter has been unsuccessful in attempting to gain a greater understanding of the utilisation of exhibits, as well as the wider themes connected to bankruptcy in the court, and the methodology undertaken throughout the thesis is more fruitful on a wider scale.

However, this chapter has been successful in highlighting the manner in which the narrative of the case altered according to the stage of proceeding. In any adversarial process there is never one set and accepted plot, story, or script, to which we can gain access. However, in this chapter we get a much more clearly defined story, in the sense that we can follow our main protagonists from the bankruptcy of Edward Halliday in December 1733, through to the final judgement of the court in June 1752. Indeed, while this centres on the bankruptcy of Edward Halliday, he himself is just a periphery figure, as the suit zooms in on the actions of his mother and the assignees as they fight over the legal right to an estate. Even within this process, we can only gain access to a snapshot of Edward Halliday's bankruptcy, as the beginning, and indeed the end, of the debt-recovery process occurred outside of Chancery. The narrative timeline of failure is presented much more clearly in this chapter, demonstrating that the methodology employed has significant ramifications for a discussion of the construction, and reinterpretation, of legal narratives, as it is essential to pay close and

detailed attention to the creation and utilisation of particular documents as the suit progressed.

Conclusion

This thesis set out to examine the way in which cases involving bankruptcy were litigated in the court of Chancery. While it is well established in the existing literature that Chancery played an increasingly active role in bankruptcy proceedings, and that Lord Chancellor Nottingham established the sole appellate jurisdiction, little was known about the specific details of how bankruptcy cases came to be heard in the court. This thesis has made an original contribution to our knowledge of early modern bankruptcy by establishing how individuals involved in a commission of bankruptcy sought the aid or assistance from the court in the ongoing process. In contrast to the work of Muldrew, who presents credit and debt recovery in too simplistic a manner, I have argued throughout that the formal authority of Chancery was needed in order to maintain and uphold a complex system of debt recovery.[1] As such, the thesis has demonstrated the importance of utilising Chancery sources to gain a more nuanced understanding of early modern bankruptcy, as the complex and multifaceted nature of debt recovery has been overlooked, and misunderstood, in the historiography. This is especially true when it comes to a number of international edited collections — particularly the work of Beerbühl — who often assume that European bankruptcy was to be avoided at nearly any cost.[2] Furthermore, in contrast to the work of Andy Wood, who has undertaken a multi-court analysis in order to 'cull' sources from multiple stages of proceeding, I have argued that scholars must pay close attention to the procedures of the court, and especially to the people and processes that went into creating the documents which have survived.[3] As the legal requirements of the court altered as the suit progressed, we can only fully understand how bankruptcy — or indeed any type of suit — was litigated by pausing and analysing each

[1] Muldrew, *The Economy of Obligation*.
[2] Beerbühl, 'Introduction', pp.9-26; Gratzer and Stiefel, *History of Insolvency and Bankruptcy From an International Perspective*; Safley, *The History of Bankruptcy*.
[3] Wood, 'Fear, Hatred and the Hidden Injuries of Class in Early Modern England', pp.803-826.

stage of proceeding in isolation. Promulgating such a methodological approach has wider ramifications for the use and classification of legal documents by historians, as scholars must explicitly explain which types of documents they are using, and from which jurisdiction and phase of the legal process, they have been taken.

Turning to the themes discussed in the thesis, these have received a degree of unequal treatment across the chapters. This is to be expected, as each chapter has focused on a different stage of proceeding, and therefore, a different type of document. The first two chapters analysed the pleadings stage of proceeding. The first chapter built upon the seminal work of Julian Hoppit, by moving away from a quantitative approach to bankruptcy, and instead focusing on the reasons why those involved in a commission of bankruptcy sought redress from the court.[4] Indeed, rather than approaching the language utilised in these documents as 'stories' or other such fictional accounts — as seen in the works of Laura Gowing, Margaret Hunt, Sara Butler, and others — constructed to be plausible or believable to the court, this chapter focused on the specific details provided in the surviving documents.[5] Undertaking this approach provided a more nuanced understanding of bankruptcy procedure by illustrating particular instances, and specific examples, of how a commission of bankruptcy broke down. This chapter demonstrated that when we analyse the failure of a system, it often yields the most interesting information about the nature of that particular system.[6] With regards to bankruptcy procedure, there were three distinct disparities between the legal ideals established in legal commentary and parliamentary statutes and day-to-day procedure. Firstly, an informal version of discharge was occurring before 1706, demonstrating that legal scholars have overestimated the importance of this statutory

[4] Hoppit, *Risk and Failure in English Business;* see also Levinthal, 'The Early History of Bankruptcy Law', pp.223-250.
[5] Gowing, *Domestic Dangers*; Hunt, 'Wives and Marital "Rights"', pp.107-129, p.113; Butler, 'The Law as a Weapon in Marital Disputes', pp.291-316.
[6] Llewetjtren and Hoebel, *The Cheyenne Way*.

invention.[7] Secondly, multiple suits were executed accusing individuals of manipulating the legal process for their own benefit and to the detriment of others, highlighting the way in which bankruptcy procedure could be exploited. Finally, the chapter demonstrated how a bankrupt could initiate proceedings and take direct aim at their personal treatment. Taken in isolation, individual cases within this chapter grant us insights into the way individuals dealt with specific issues and managed to circumnavigate problems within a commission of bankruptcy. Collectively, they demonstrate that the ideals established in the statutes did not always conform neatly to the practical realities of procedure, as the three disparities above clearly illustrate. Ultimately, the historiography of bankruptcy has not paid attention to the specificities of such discrepancies, and this chapter has added a further layer of complexity to bankruptcy procedure and its subsequent litigation in Chancery.

The second chapter examined the cases in greater detail, and placed such an analysis within the existing scholarship surrounding circulating judgements, and assessments of trustworthiness and credibility, particularly in relation to the works of Muldrew and Shepard.[8] As such, the chapter discussed the degree to which commissions of bankruptcy, and knowledge of the individual actions of a bankrupt, were widely known to those within the trading community. Ultimately, the chapter analysed the narrative in pleadings surrounding a dynamic series of events which led to an individual failure, in order to show how those involved in bankruptcy proceedings began to judge the demise of an individual. Pleadings provide a clear, chronological description of the path that the commission of bankruptcy had taken, and the specific details of how this procedure had failed. As such, the ambiguities surrounding certain aspects of the timing of failure became amplified in Chancery, as time

[7] Tabb, 'The Historical Evolution of the Bankruptcy Discharge', pp.325-371; McCoid II, 'Discharge: The Most Important Development in Bankruptcy History', pp.163-193; Beerbühl, 'Introduction', pp.9-26.
[8] Muldrew, *The Economy of Obligation*; Shepard, *Accounting For Oneself*.

itself became a contested concept. This chapter illuminated specific aspects regarding the temporality of trade, both in terms of individual actions influencing future dealings, as well as an analysis of the past, and credible, activities of debtors. Ultimately, this chapter has greatly enhanced our understanding of bankruptcy procedure, by highlighting the manner in which the complexities of the bankruptcy process unsettled the ability to be able to look back and judge an individual's credibility, worth, and trustworthiness. Again, this chapter adds another dimension to the existing scholarship on these issues, by showing that the level of complexity and the multifaceted nature of bankruptcy procedure has been overlooked, and misunderstood, in the historiography.

The next two chapters turned to the evidential stages of proceeding. Chapter three foregrounded the important recent work of Frances Dolan, and the need to 'recast mediation as collaboration' and interpret depositions as a form of evidence in their entirety.[9] This is in stark contrast to the methodological approaches highlighted in this chapter, whereby scholars often employ various technical manoeuvres in order to try to recover the 'authentic voice' of deponents.[10] Nevertheless, as this stage of proceeding provided a platform for witnesses to describe, comment, and critique an individual failure, we can see the use and presentation of evaluative language within these documents. By analysing such specific words and phrases, it is possible to highlight the narratives constructed in the discussion surrounding economic, physical, psychological, and even emotional failure. By employing such a methodological approach, and paying close attention to the procedure put in place to interrogate witnesses, this chapter showed that Chancery was not only a court that was utilised to maintain the bankruptcy process, but was also an institution which helped to create such narratives. The

[9] Dolan, *True Relations,* p.118.
[10] Chaytor, 'Husband(ry)', p.401, n.1; Walker, 'Rereading Rape and Sexual Violence in Early Modern England', p.20, n.4; Walker, *Crime, Gender and Social Order in Early Modern England,* p.xv; Capp, *When Gossips Meet*, p.vii; Gowing *Common Bodies,* p.210, n.1; Gowing, *Domestic Dangers,* pp.45-46.

words used to denote failure and decline mirrored wider conceptions of morality, credibility, and ethical behaviour within the community, as bankrupts were depicted as descending from a respectable position, to that of an untrustworthy individual. Witnesses maintained a degree of agency over the words and phrases they used, which highlights the multitude of ways in which those involved in a suit discussed and debated such failures. This illuminates wider social norms and values concerning bankruptcy, as well as informing us of how similarities in the construction of narrative — such as between insanity, melancholy, and financial failure — were utilised in a legal setting.

The fourth chapter examined Masters' exhibits as a form of evidence and analysed one type of document in detail: bankruptcy commissioners' files. The survival of these documents are rare for this period and this chapter is the first substantial work to analyse these files in any meaningful way. Furthermore, while legal scholars have focused on the jurisdiction of commissioners, and the authoritative status of their examinations as a form of evidence, this chapter investigated the specific work of commissioners in greater detail.[11] By applying the same set of methodological questions surrounding the creation and nature of witness testimony applied to depositions, this chapter greatly enhanced our understanding of the specific work conducted by commissioners, adding a new layer to the complex process of bankruptcy procedure. One theme that was discussed exclusively in this chapter, was that of the form, style, and presentation of these documents. This was necessary for a number of reasons. Firstly, because a reference to a Chancery Master could occur at any stage of a suit, the chapter did not fit neatly into the overall methodological approach of analysing each stage of a proceeding in isolation. Similarly, because the range of documentation presented to, and created by, the court varied much more dramatically than at other stages of proceeding, close

[11] Jones, 'The Foundations of English Bankruptcy', p.48.

attention was paid to the type of document analysed at this stage of the process. As such, these documents were the only sources which went through two stages of being utilised as evidence. The first can be seen in the witness statements, taken by commissioners solely for the purpose of determining whether the debtor was a bankrupt, while the second was their use in a Chancery suit to inform a Master about a particular aspect of the case he was investigating. Ultimately, this is an important distinction as the witness statements and construction of narrative within these documents did not have to conform to the legal requirements of a central equity court.

Analysing these sources allowed a unique insight into the role and work of commissioners, as well as the way in which a range of individuals were examined within a particular bankruptcy. The active manner with which commissioners investigated a range of witnesses, and listened and interpreted the statements, provided the background to analysing the written documents which have survived. As such, commissioners were investigating a range of witnesses who had knowledge of the bankrupt's activities. But again, the chapter focused on the specific words and phrases that were found in these documents, rather than attempting to 'filter out' any mediating authority. In conjunction with the previous chapter, analysing such language enhances our social and cultural understanding of bankruptcy as we see how certain words or phrases were utilised to describe financial failure. In this chapter, particular attention was paid to the use of the word absconding, and how it was chosen in relation to notions of exile from accepted social and cultural norms, as well as acceptable places and activities within society. Ultimately, this illuminates the complex and multifaceted use of the word, as while commonly associated with immorality and sin, a more nuanced understanding of absconding was shown. Often, individuals invoked the term in a voluntary and self-descriptive manner, attempting to describe themselves in a virtuous and trustworthy way. Indeed, such individuals explained that they had been forced to make a difficult and life-

altering decision that was beyond their control. Ultimately, this chapter undertook a more detailed social and cultural analysis of the word absconding, in order to demonstrate how legal terms held wider connotations in society.

Chapter five focused on the final stage of proceeding in Chancery by analysing a set of enrolled decrees. This chapter demonstrated that Chancery suits were rarely concluded in a definitive manner, as often the collection and distribution of the bankrupt's estate was ongoing. I argued that common notions — traditionally employed by social historians of the law — of attempting to establish a clearly identifiable winner and loser were misguided, and in many circumstances incorrect. As such, enrolled decrees cannot be expected to provide a form of narrative closure to a case, as very often the parties within a suit — i.e. defendants or plaintiffs — were not a homogenous group, as individuals received different outcomes and varying degrees of success. This analysis was taken a step further by assessing the concept of blame, as while the appropriation of costs to the unsuccessful party can give an indication of wrongdoing, often such parties were simply unable to prove that they held a right to equitable relief within the jurisdiction of Chancery. Particular attention was paid to cases which had been appealed up the legal hierarchy, demonstrating the manner in which Chancery attempted to act as a type of arbitrator, and where appropriate, render a fair and equitable judgement to each individual claim. Indeed, while scholars such as Horwitz have shown how such an aim was broadly applied to a number of topics, and different types of suit, this chapter was the first attempt to apply this principle exclusively to cases involving bankruptcy.[12] In this chapter, the construction of the plot, story, or script, which had been created was entirely that of the judge and the bureaucracy of the court. The summaries of the case show what the court determined were the pertinent legal issues to be decided, while the legal decision was

[12] Horwitz, *A Guide to Chancery Equity Records*, pp.9-10.

presented orally, and transcribed by a Chancery clerk. Paying close attention to these details has shown that this stage of the legal process is far more complex than many scholars have recognised. These suits were again contrasted to the simple types of credit utilised in Muldrew's research, as we see that the credit networks within bankruptcy suits had already been formed, and were so complicated that they required the expertise and formal authority of the court to untangle such webs. Indeed, the methodology employed in this chapter demonstrated that only by unravelling these complex, multifaceted, and vehemently debated cases, can we reveal the specificities of how bankruptcy was litigated and decided within the court. Ultimately, while we might expect legal proceedings to be straightforward, or at least concluded in a simple manner, this chapter demonstrated that this was simply not the case.

The final chapter departed from the methodology employed in the previous chapters by analysing one case — *Hancock v Halliday* — in detail through the whole range of records. This chapter highlighted the extensive time, effort, and expense that went into undertaking such a task, demonstrating the substantial filing and cataloguing difficulties that needed to be overcome to complete the process. Furthermore, the chapter sought to show how the use of language altered according to the legal requirements of the court. Indeed, by analysing the bankruptcy of Edward Halliday as it progressed through the different phases, it was possible to show how pertinent details of the suit had been amplified, or condensed, according to their usefulness as a legal argument. As such, the chapter illuminated the manner in which the narrative of the case altered according to the stage of proceeding. For example, while decrees provide a great deal of additional procedural information regarding the way the suit progressed, they often omit interesting and pertinent details. Similarly, while pleadings provide forceful arguments and background information about a particular bankruptcy, any interrogatories, examinations, and depositions can uncover personal information relating to parties in the suit. As such, this chapter reinforced one of the central arguments of the thesis,

namely that scholars must pay close attention to the procedures of the court, and especially to the type of document to be found at each stage of proceeding. More broadly, undertaking the methodology employed in this chapter enables a far greater understanding of the specificities of any given case and the manner in which it progressed within the court. However, in terms of the specificities of bankruptcy, it was shown that this chapter was unsuccessful in attempting to gain a greater understanding of the utilisation of exhibits, as well as the wider themes connected to bankruptcy in the court. This comparative chapter was a useful exploration, but demonstrated that on a wider scale, the methodology undertaken throughout the thesis is a far more fruitful approach in order to explore any given topic within Chancery.

One core theme that runs through the thesis concerns the construction of the plot, story, or script, in these documents, and the way in which a particular type of language was utilised in the form of a compelling narrative. In each chapter, I have argued that scholars need to pay attention to the people and processes that went into creating the written documents which have survived at each stage of proceeding. In contrast, other themes — such as the bureaucracy of the court, the form and presentation of documents, and the utilisation of paperwork as a form of evidence — have received uneven treatment depending on the aims of the chapters. Furthermore, some interesting questions have been raised which hold the potential for further study. The thesis has not attempted to come to a complete and comprehensive understanding of pre-modern bankruptcy, which would require undertaking a multi-court analysis. Similarly, the aim was not to provide a historical analysis of the equitable jurisdiction of Chancery. However, both avenues could be pursued by building upon the findings made in the thesis. For example, it would be possible to draw upon the sample of cases utilised throughout — as well as discovering new suits — and attempt to follow as many as possible into the common law courts, such as the King's Bench or court of Common Pleas. This has the potential to come to a firmer understanding of the way in which

judges and juries grappled with specific issues of fact in bankruptcy proceedings, for example, the exact timing of an act of bankruptcy. It would also be possible to follow cases into other equitable jurisdictions, particularly the court of Exchequer. This holds the potential to see how and why those involved in a commission of bankruptcy sought the aid and assistance of other equitable courts, which came to work alongside Chancery as its case load expanded. This would enhance our understanding of early modern bankruptcy by demonstrating the differences between jurisdictions, and the specific issues to be decided by the courts. Finally, it would be possible to broaden the scope of the thesis and come to a firmer understanding of Chancery as an equitable institution by analysing cases which were concerned with debt recovery. As Chancery material remains a dramatically underused source for economic, social, and legal historians, this holds the potential to build on the work of scholars such as Horwitz and Polden and enhance our knowledge of how the court acted more generally.[13]

However, if we focus on the methodology and scope of research applied throughout the thesis, then there remains ample opportunity for future research. For example, only 228 pleadings were utilised in the first two chapters, out of a total of 971 discovered via an online search of the term 'bankrupt' on The National Archives' website. This leaves 743 unexamined cases which were easily identifiable from an online search. Again, there are undoubtedly many more additional cases involving bankruptcy to be discovered within the vast records held at The National Archives. Yet, even within these two chapters several themes and potential discussion points have been omitted. Indeed, the sample of 228 cases could justify an entire thesis on their own. Due to the practical restrictions of time and space, themes were prioritised which spoke more directly to the aims of the thesis. One such theme

[13] Horwitz and Polden, 'Continuity or Change in the Court of Chancery', pp.24-57.

that received little attention concerned the role of women. Majorie Mcintosh has shown how women were seen to be within the scope of the early statutes, and so could be declared bankrupts.[14] However, both reported cases and archival material relating to female bankrupts are exceptionally rare. Discussing such cases involving married women bankrupts, Karen Pearlston has suggested that due to the limited number of suits, they cannot inform us 'about trends in terms of the development of bankruptcy, insolvency, or debtor-creditor relations in the narrow sense'.[15] A similar point can be made about my own research, as within my sample only three cases identified women as bankrupts.

Pollard v Launder (1725), was discussed in detail in chapter two and centred around the perceived credibility of three siblings and co-partners, Henry, Mary, and Elizabeth Brunsell.[16] Similarly, in *Streare v Hume* (1750), the bankrupt Catherine Hume was described as a grocer and a mercer, and was accused of fraudulently executing a pretended bill of sale to her daughter.[17] *Pope v Pope* (1710-1711) was not discussed in the thesis, but concerned the will of Richard Pope, whose widow was described as a mercer and was declared a bankrupt after his death.[18] However, across all three suits, there was limited background information provided about their individual failures, meaning that a detailed analysis of these women was not possible. More broadly, the role of women as creditors, debtors, investors, plaintiffs, defendants, and perhaps most importantly, witnesses, has been touched upon, but not explored in any meaningful way. Chancery certainly provided a platform for such individuals to provide detailed accounts of individual failure and the manner in which a commission of bankruptcy had broken down. There is certainly scope to undertake a gendered approach to

[14] Marjorie Mcintosh, 'The Benefits and Drawbacks of Femme Sole Status in England, 1300–1630', *Journal of British Studies*, vol.44, no.3 (2005), pp.410-438.
[15] Karen Pearlston, 'Married Women Bankrupts in the Age of Coverture', *Law and Social Inquiry*, vol.34, no.2 (2009), pp.265-299, p.295.
[16] TNA, C11/291/33, 'Pollard v Launder' (1725).
[17] TNA, C11/1637/23, 'Steare v Hume' (1750), Bill of Complaint.
[18] TNA, C6/362/42, 'Pope v Pope' (1710-1711), Bill of Complaint.

bankruptcy proceedings, and to analyse how, when, and why certain women interacted with the process in Chancery. In discussing bankruptcy proceedings, William Jones has stated that 'Women appear as bankrupts, occasionally as partners but more commonly as widows who had assumed a shop or trade'.[19] Undertaking such an approach holds the potential to demonstrate how women were more actively involved in bankruptcy proceedings than has previously been assumed. But at present, this is just speculation.

Similarly, while the thesis has greatly enhanced our understanding of the specificities of bankruptcy procedure, and how and why cases were litigated in Chancery, some aspects have received more attention than others. Returning to the trading distinction, there is a consensus in the existing scholarship that certain occupations, such as farmers and innkeepers, were explicitly excluded from bankruptcy proceedings. William Holdsworth states that by the end of the seventeenth century, the courts had decided that 'neither farmers nor inn-keepers were traders within the meaning of the Acts', while Hoppit goes as far as to suggests that farmers 'never fell within the scope of the law'.[20] Yet, as early as 1980 and undertaking a quantitative analysis of bankruptcy, Sheila Marriner acknowledged that many 'non-trading' occupations — such as farmers — were explicitly mentioned in bankruptcy proceedings throughout the eighteenth, and into the nineteenth century.[21] Indeed, throughout the sample of cases utilised in the thesis, bankrupts are occasionally referred to, or refer to themselves, as farmers or innkeepers, demonstrating that the expansion of the economy had rendered previous legal stipulations far too complex to be reduced to a simple list of acceptable and unacceptable occupations. This suggests that there is scope to undertake a qualitative analysis of the trading distinction in Chancery in order to come to a more nuanced understanding of the

[19] Jones, 'The Foundations of English Bankruptcy', p.24.
[20] Holdsworth, *A History of English Law*, vol.8, p.237, n.4; Hoppit, *Risk and Failure in English Business*, p.24.
[21] Sheila Marriner, 'English Bankruptcy Records and Statistics Before 1850', *Economic History Review*, vol. 33, no.3 (1980), pp.351-366.

working activities of a range of occupations in relation to trade. Similarly, while the thesis has been successful in demonstrating the multifaceted nature of bankruptcy suits, the level of complexity could be taken further by analysing how other topics intersected with bankruptcy. However, both of these investigations would require a detailed understanding of particular issues — such as marriage contracts, the law of coverture, apprenticeships, wills, stocks, investments, international trade, occupations etc. — and would require a larger sample size to come to an understanding of how these initially independent topics came together and were litigated within the court. Ultimately, such an analysis falls outside the scope of the thesis.

This thesis has made an original contribution to our knowledge of bankruptcy and the court of Chancery in three ways. This is the first substantial work to analyse the manner in which the procedure of bankruptcy was litigated within the court of Chancery, refocusing our attention on the importance of Chancery records in the history of pre-modern bankruptcy. This has greatly increased our knowledge of how the formal authority of the court was required in order to maintain and uphold a complex system of debt recovery. This adds another dimension to the existing scholarship, by showing that the level of complexity and the multifaceted nature of bankruptcy procedure has been overlooked, and misunderstood, in the historiography. Secondly, by utilising Chancery sources to reconstruct the operation of bankruptcy, the thesis has highlighted the necessity of paying close attention to the procedure of the court, and the people and processes that went into creating the written documents which have survived. I have argued throughout the thesis that scholars can only understand how a particular type of suit was litigated within the court by providing background and context to both the type of document being utilised, as well as the stage of proceeding from which they have been taken. Finally, the thesis adds to our understanding of the social and cultural history of the period by demonstrating the manner in which parties in a suit utilised the court for their own benefit and created the documents which have survived. Particular

attention has been paid to the specific and evaluative language utilised in these documents in relation to fraud, creditworthiness, honesty, and sincerity, and how these can inform us of wider social perceptions of failure.

The methodological approach applied in the thesis will encourage social and cultural historians to reassess the manner in which they use legal documents, both within and outside Chancery. The thesis has uncovered how the concept of failure — as a social construct at law — had been established and debated so that the court could repair or complete the bankruptcy process. However, this very notion of failure was itself complex, as a range of individuals — and not simply the bankrupt — were accused of acting in a fraudulent, untrustworthy, and deceitful manner. In this sense, the debt-recovery process had itself failed, as the overarching authority of Chancery was required in order to maintain the system. As such, Chancery was not only a court to be used and utilised as a debt-recovery mechanism, but was also an institution which helped to create legal narratives. The thesis has provided evidence of the way in which the court mediated in social and financial affairs, and by analysing the narratives presented at the different stages of proceeding, it has been possible to highlight the multiple meanings of words and phrases used to describe and denote such failures. This has highlighted the manner in which economic knowledge was created, shared, and disseminated within the wider community, providing further insights into the social and cultural meanings of debt collection. Both legal and cultural terms were utilised in order to appraise an individual's actions, worth, and credibility. Ultimately, the thesis has demonstrated that the way in which a range of individuals attempted to provide accounts of publicly acceptable behaviour on the one hand, and immoral actions on the other, were far from straightforward. This has further complicated our understanding of how Chancery came to make decisions based upon the concept of fairness and justice, upsetting the notion of conscience as a juristic principle.

Conventions and Abbreviations

Conventions

Original spelling and punctuation in all primary sources has been reproduced throughout and my own insertions have been made in square brackets. Unless otherwise stated, all emphasis — italics and capital letters — was found in the original texts. The short title of cases are reproduced as they are found on the TNA website or in primary sources. The name of any individual in a case is spelt according to the first reference in the documents.

In the currency used throughout this thesis, £1 is made up of 20s (shillings), and 1s is made up of 12d (pence).

Though sources from before 1752 use Lady Day dating, I have taken the year to begin on 1 January and end on 31 December throughout this thesis.

Abbreviations

TNA: The National Archives, Kew

ODNB: Oxford Dictionary of National Biography (Oxford University Press), online edition

AALT: University of Houston: Anglo-American Legal Tradition

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The National Archives, Kew

C6: 385/80, 398/95, 369/77, 385/45, 402/51, 419/88, 404/40, 416/12, 401/61, 409/19, 407/28, 383/6, 373/10, 416/14, 378/46, 327/24, 388/51, 381/30, 388/52, 405/57, 380/58, 394/37, 407/32, 382/69, 381/15, 381/42, 415/77, 384/70, 373/38, 313/16, 387/74, 361/42, 419/54, 411/26, 393/8, 378/53, 395/41, 400/29, 400/38, 378/62, 318/30, 402/70, 376/24, 391/16, 376/19, 417/69, 387/45, 365/48, 383/73, 417/68, 380/74, 407/80, 412/17, 379/39, 378/47, 384/116, 377/36, 411/44, 410/41, 368/90, 418/6, 412/74, 362/42, 382/21, 374/46, 360/26

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